United States Court of Appeals

for the Second Circuit



APPELLANT'S APPENDIX

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74-2221

United States Court of Appeals

For the Second Circuit

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CHARLES DEFELICE, a minor under the age of 21 years, by his Mother, GERTRUDE DEFELICE, PETER A. DUNN, a minor under the age of 21 years, by his Mother, SUSIE HARRISON, GEORGE IRISH, JR., a minor under the age of 21 years, by his Father, GEORGE J. IRISH, VILMA MORAN, a minor under the age of 21 years, by her Father, PEDRO MORAN, ALFREDO A. RAMOS, a minor under the age of 21 years, by his Mother ALFRIDA RAMOS on behalf of each and on behalf of all others similarly situated,

Plaintiffs-Appellees,

v.

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, MURRY BERGTRAUM, President of the Board of Education of the City of New York, HARVEY B. SCRIBNER, Chancellor of the Schools of the City of New York, IRVING ANKER, Superintendent of Schools of the City of New York, JACOB ZACK, Assistant Superintendent in Charge of High Schools of the City of New York, and HILLERY C. THORNE, Director of Central Zoning of the Board of Education of the City of New York,

Defendants-Appellants.

On Appeal from the United States District Court for the Eastern District of New York

APPELLANTS' APPENDIX

VOLUME II OF FOUR VOLUMES

(Pages 163 to 549)

UNITED STATES COURT OF APPEALS
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SECOND CIRCUIT

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Lane.

CROSS EXAMINATION CONTINUING

BY MR. GOFSTEIN:

Q I believe Mr. Selub testified that Lane was very overcrowded in '68-'69, during the time the high school problems --

THE COURT: What was that.

Q I believe Mr. Selub testified that Lane high school during that time was facing quite a few problems as a result of overutilization and crowding, and that he had purposely put the school on single session.

MR. GOFSTEIN: Objection to the form.

MR. TODEL: I'm bringing up prior testimony which the plaintiff have adduced. I would like Mr. Saltzman to comment.

MR. GOFSTEIN: Objection to the form of that question.

THE COURT: Overruled.

THE WITNESS: Yes, it was our understanding that along with bringing more pupils in from Queens, at the same time something was supposed to have been done to reduce the zone on theBrooklyn side so that fewer students would be coming in from Brooklyn.

CROSS EXAMINATION CONTINUING

BY MR. GOFSTEIN:

Q Where were the students from Brooklyn who had previously gone to Lane, where were they going to go?

A We never discussed that.

Q You had no particular proposal -- also the students from Richmond Hill going to Lane you simply assumed they would not be replaced by anybody from Richmond Hill, that it was simply a matter of decreasing overutilization?

A As indicated, Richmond Hill and John Adams was a heavily utilized school, more so than Lane.

Q Were other schools also facing the same problem?

A I don't remember the figures. I imagine there were other schools as overly utilized as those.

Q When you were taking a hundred or two hundred, a hundred and fifty students out of Lane in the Brooklyn part, did you give any consideration as to where they would be transferred or was that not your problem?

A AsI recall there was discussion of that. It was our feeling that this was a Board of Education prerogative and we didn't want to infringe on their prerogative.

Q It's a Board of Education prerogative --

A Excuse me, we never proposed any figure, that's your figure.

Q If not a figure you were proposing the western part of Lane be taken away; is that right?

A We indicated that zoning change, that would give the school -- it would be drawing students in equal direction.

Q Skipping the question applying to Brooklyn -- if Richmond Hill students, if a section that belongs to Richmond Hill was going to go to Franklin K. Lane, did it occur to you that Richmond Hill would then be winding up very near to the border of its district. It would in no way be in the center of the Richmond Hill district?

A I'm not sure I understand your question. Will you rephrase it.

Q If you were to add to the eastern part of Franklin K. Lane from zones that are now zoned into John Adams or into Richmond Hill, just looking at the map it becomes very clear that you moved the district further east, was that a concern of yours?

A We never proposed going so far over to Richmond Hill or John Adams or Grover Cleveland. We weren't talking about miles of zoning. We were talking in terms of under a mile and it wouldn't have gone that far.

Q Were you aware?

A Richmond Hill was drawing youngsters from four directions, north, south, east and west.

Q But weren't you aware that Richmond Hill was already not in the center of its district, at least on an east-west basis, that it was further over west into its district than if you were to take over some of those areas from Richmond Hill you would then put Richmond Hill even in a more awkward position in regard to what would have been left of its district?

A I don't think that's so.

Q I guess we'll have to look at the map later and consider it with the other witnesses.

THE COURT: We might as well look at it now. What is HC.

MR. GOFSTEIN: Hillcrest. That high school zone was not there.

THE COURT: Hillcrest was not.

MR. GOFSTEIN: Was not.

THE COURT: The lines in the middle of Queens were sort of radically changed.

MR. GOFSTEIN: That was for this school year.

THE COURT: Yes.

MR. TODEL: I don't know if we have the map

we are looking for which is a Queens map.

THE COURT: Probably you don't have it in large size.

MR. GOFSTEIN: Your honor, I think we could use that large blue map but I think we could make a point with it.

CROSS EXAMINATION CONTINUING

BY MR. GOFSTEIN:

Q Now, Mr. Saltzman, we have a map of Queens high school zone line effective September 1972, and I would just caution you that this map is not the same for Queens as the one that was in effect for the period that we are talking about since Hillcrest high school just was opened in 1971. As a result this whole huge district in the middle was taken from the adjoining district that previously belonged to other high schools. Most of this area (indicating) here in Hillcrest would have been the eastern end of Richmond Hill over here.

I ask you again if Franklin K. Lane which borders here, Franklin K. Lane, Richmond Hill borders over here, would have gone further east to get sizable number of white pupils, presumably we would have the border approximately over there (indicating)?

A You couldn't go that far. That's a pretty --

MR. TODEL: If the court pleases I respectfully object to this line of examination. Actually Mr. Saltzman is here primarily for showing that the Board was made aware of certain conditions existing in Franklin K. Lane, and also the fact that there were certain areas that were contiguous to the zone that had a fairly large white population in the school. Mr. Saltzman was presented just for that purpose, for him to give what his opinion would be with reference to how the zone should be drawn. He was merely pointing out --

THE COURT: But it certainly -- the same reasons whether he could do anything about it or not, perfectly proper to use this occasion. The idea that the Board insisted throughout that no one school district line could be taken as a thing in itself, that every school district line affects every school district line, it's just the way a stone drops in the pool however large will affect the pool as far as it goes now, that's true, isn't it? Do you teach physics.

THE WITNESS: Social science.

THE COURT: They have stones and pools in social science too, if I recall.

Q In this plan keeping in mind Richmond Hill extended further over east --

A I don't know.

Q Unfortunately we don't have the map. One point is that you expressed concern over a school being or not being in the center of its zone, and I think you gave the impression that Franklin K. Lane was not where perhaps others were. Did it occur to you and did you make any recommendation in respect to this to Dr. Brown that if you move this Franklin K. Lane zone further south or east you would obviously have been putting Richmond Hill or John Adams pretty much on the border of its new district hardly essential to its zone.

A We never recommended any continuing zoning, let's first understand that. We recommended zoning change. We never presented a plan to the Board and said you should do this or you have to do that. We asked for zoning changes and we felt the Board would do what was the correct thing to do, and that was their decision. Now, if you'll notice where Glendale is, Glendale is contiguous to Franklin K. Lane where youngsters from Glendale shipped over to Grover Cleveland -- and yet look where their zone is, so we never specified Richmond Hill or Ozone Park or Glendale or any other section, we left this (indicating).

Q I raise this, you implied one of the arguments used to push your plan had to do with the relative position of a high school within its district. It seems to me if that was of primary concern to you you could not ignore the fact any plan you suggest would inevitably create --

MR. TODEL: If the court please.

THE COURT: It is too argumentative. Their point was, as I understand it, that in an extreme form Franklin K. Lane presenteda picture of an exaggerated amount of centricity, the school was at the border of its district in every direction and its district extended to be contracted at the east end towards the -- rather than being expanded at its east end -- I'm sure there are explanations of all of this, good, bad or indifferent but that was their point. As I understand it, on that map the green map represents the school structure; is that right?

THE WITNESS: Yes.

THE COURT: Roughly it's not that big, but I think they took certainamount of list, there are lots of park land there but as you can see it goes all the way down to the bay and it reaches

far west into what some people would call the heart of Bedford-Stuyvesant, not too terribly far from Boys high, whereas on the east end even in that map which I think represents eastward extensions beyond what they had been in the immediately more recent years, that east line there may be the most easterly line it had in recent years, I'm not sure.

MR. GOFSTEIN: Your honor, according to the overlay map the indications are this is the line in 1961 when the school was eighty percent white.

THE COURT: I don't know but I think it's apparently as easterly as the line ever got, because I think it may have been put back to the west a little bit then moved out to the east again.

THE WITNESS: Well, your honor a point of fact, we have year books that indicate that we graduated students in the late '50's and '60's that had Richmond Hill addresses, Ridgewood and Ozone Park addresses.

THE COURT: What I was saying, to the north is the park, I forget the name.

THE WITNESS: Forest Park.

THE COURT: And the west is the cemetery, to a certain extent the drawing of school district lines right there is going to be rather eccentric and maybe all these maps would be helpful if we could sort of blot out park areas where there are no children, because they otherwise distort the line. I take it that the point was that Glendale children would be north of the cemetery and/or the park; is that it.

MR. TODEL: Ozone Park would be to the east.

THE COURT: Would be down towards the bay. Where is Glendale, just north of the cemetery.

THE WITNESS: Yes.

MR. GOFSTEIN: We may point out if the districts were to go any further south even a few blocks into John Adams, John Adams is on the border.

THE COURT: It goes almost all the way to Canarsie.

THE WITNESS: Howard Beach which is very congested, middle class area here, most of that goes into the further east.

MR. GOFSTEIN: Furtherindication of how

far these youngsters travel. If this is where the youngsters live and if this is where the high school is (indicating) --

THE COURT: What district is that.

MR. GOFSTEIN: John Adams.

THE COURT: Is that relatively new.

MR. GOFSTEIN: John Adams is an older school. John Adams and Richmond Hill are older schools than Franklin K. Lane. Both of them would predate Lane. I also wanted to ask Mr. Saltzman again, getting back to the western part of the Lane zone, the effect that any such plan would have. Again, I imagine that you did not consider where these children might be transferred to.

THE WITNESS: We had some discussion. If you are asking me if we made any proposals to the Board of Education, Dr. Brown, no; nor did he ask us for any.

THE COURT: As I understand it everybody is trying to agree with themselves. If you did cut off anything to the west you couldn't move the children north because the north is already in trouble, so they are going to have to go west

and south.

THE WITNESS: I'm not sure I understand.

THE COURT: See that great tug at the west end, if you had chopped that off altogether I think everybody would quietly assume that the movement of the children from that chopped off area would not be west where they would have no place to go except schools which were more black and Puerto Rican than Franklin K. Lane, and that therefore the thrust of any such action would inevitably push the children down into the south which was already transferree country, if I can call it that, and also in the middle of the borough was regarded as transitional country. So if you are going to make things better in any direction it would mean that those children would go into the schools in the southerly part of the borough, as far west as they dared send them.

MR. GOFSTEIN: It was additional space for that many children.

THE COURT: That's right. There is that modest question of money.

MR. GOFSTEIN: As we will show the utilization figure far exceeds those of Franklin K. Lane.

We are sending kids from 110 to 140.

Could I also ask you whether in making your proposals to Dr. Brown, who did you consult.

MR. TODEL: Objection. There has been no testimony that they made specific proposals.

MR. GOFSTEIN: The witness just testified before that the plan of Dr. Brown was one that they proposed to him with changes they would like to see made.

THE WITNESS: I did not say that.

THE COURT: Their complaint was made to Mr. Brown.

THE WITNESS: We pointed out to Dr. Brown if the Lane zone were not changed the school would become resegregated in a very short time which unfortunately if you look at the statistics today --

CROSS EXAMINATION CONTINUING

BY MR. GOFSTEIN:

Q What do you mean by resegregated?

A A school at one time was predominantly of one ethnic group and over a period becomes predominantly overwhelming -- the school had been predominantly white, seven or eight years prior and is becoming predominantly black.

THE COURT: Otherwise it would be segregated in reverse where it had been.

MR. GOFSTEIN: Even if we don't consider it a formal plan I would still like to know.

You said you met with Dr. Brown and discussed these possible changes. Were you just representing UFT.

THE WITNESS: I was. At that time I held dual positions. I was UFT chapter chairman of the school and I was also the UFT union representative.

CROSS EXAMINATION CONTINUING

BY MR. GOFSTEIN:

Q Were you representing both of those groups?

A Yes.

Q Were you in any way representing any parent group?

A No.

Q Did you consult with parent groups?

A Absolutely. I had been in constant communication with the parents association president from 1965 to 1969.

Q Which parents?

A The lay parent association.

Q Were you associated with the parents association of junior high schools?

A No.

Q Or of the area you would want included?

A No.

MR. GOFSTEIN: I have no further questions.

REDIRECT EXAMINATION BY

MR. TODEL:

Q Mr. Saltzman, in 1965 you testified that time some proposal had been made to the Board of Education; is that correct?

A Yes.

Q And at that time you had suggested not only the transfer of children from the Lane district to Richmond Hill and John Adams but also to the north, this wouldbe the northwest, Grover Cleveland; is that correct?

A Yes, we did. The proposals that were made back in 1964-65 indicated that it would be logical to extend the zone towards Glendale and Ridgewood, and that was after that very inept study that had been done by the teachers' committee in 1964-65. And the line of transportation to Grover Cleveland from the area on the western portion of the Lane district, there are transportation lines available.

Q And there are transportation lines available from Glendale to Franklin K. Lane?

A Absolutely, very convenient ones.

Q And from Richmond Hill to Franklin K. Lane?

A Absolutely, Jamaica Bus and el travel right along there.

Q The students who travel to Lane today from various parts of the Lane district, do they use more than one means of transportation?

A Large numbers of students have to take two trains, the BMT and IND in order to get to Lane, and some have to take the train and the bus, the youngsters from the western end of the district.

MR. TODEL: No further questions.

MR. GOFSTEIN: I have no further questions.

THE COURT: Step down please.

MR. TODEL: I'll call Mr. Thorne.

H I L L A R Y C . T H O R N E , having been called as a witness, was sworn by the Clerk of the Court and testified as follows:

DIRECT EXAMINATION

BY MR. TODEL:

Q Mr. Thorne, you were served with a subpoena on December 5, 1972 and pursuant to that subpoena do you have with you the composite figures for the Brooklyn and Queens high school population with you here?

A I have it in individual sheets for each ofthe schools

in Queens and each of the schools in Brooklyn.

Q May I have them, please?

A This is my reference material. They have a copy. I believe they have a copy for his honor too.

MR. TODEL: If the court please, can we mark the map for identification purposes.

THE COURT: It doesn't make any difference whose exhibit it is.

THE CLERK: Plaintiff's exhibit 4 for identification, Queens high school zone lines map effective September 1972 previously referred to.

DIRECT EXAMINATION CONTINUING

BY MR. TODEL:

Q Mr. Thorne, by whom are you employed?

A Board of Education of the City of New York.

Q How long have you been employed by the Board of Education?

A About twenty-seven years.

Q And what is your present position?

A Director of the central zoning unit.

Q And how long have you been director of the central zoning unit?

A Since 1969.

Q And what are --

A Before that, that's the actual date of appointment, official appointment, but I had a probationary period from 1966.

Q In other words, you are sort of an acting director since 1966?

A Yes.

Q And what are your responsibilities and duties as director of zoning?

A I supervise a staff of about thirty made of statisticians, planners, clerical staff and borough zoning associates, eight of them assigned to the various boroughs, that's just the supervision end. The other is to receive from the office of high schools, office of the elementary and junior high schools plans that have been arrived at through recommendations by the communities, community school boards of the community superintendents, parent groups and the rest, and to make feasibility studies of the plans which are arrived at by these varied and different divisions.

Q What do you mean by feasibility studies?

A We take into consideration all of the data that has been assembled, particularly on the basis what we call the ethnic census and registered census which is a calendar item each year. We take that into consideration

and we apply criteria before we in our review function, before we pass on or recommend to the chancellor that the program is a good program. We also -- and the criteria -- the chief criteria, does the proposal which does come from the community violate the policy of the Board of Education as set up, and other criteria are, continuity of education, typographical area, the distance from the school to the home of the children involved, integration and utilization, the improvement of integration and utilization.

Q In other words, actually up the criteria set up by the Board of Education, there are four essential criterias?

A No, there are six. Did I mention only four.

THE COURT: Let's go over them since they are important.

Q I think March 24, 1972 the Board of Education submitted certain criteria -- further integration is one of them and the second?

A Utilization.

Q And to recognize geographical factors --

A Proximity to school; national boundaries --

THE COURT: National boundaries, major traffic arteries. Does that mean transport.

THE WITNESS: Highways and the rest.

Q And is the third criteria availability of transportation facilities?

A Yes.

Q And the fourth one is to insure continuity of education of students?

A Yes.

Q What does the Board mean by continuity?

A No plan will be recommended by me as approved or by my staff if it in any way interferes with the continued education of a child. We discourage the changing of children's attendance schedules in the middle of the year. That child would have to adjust himself to different teachers, different atmosphere.

Q That is for changes, if I understant you correctly, changes which occur during the school year; is that correct?

A Yes, and also we do not as a rule move out of a school children who have begun in that school.

Q However it would not interfere with the continuity of the education of the students if for example in planning new zones, that there are plan six months or a year in advance?

A No child attending a school registered in that

school would beasked to move into another school.

Q However, plans could be made six months or a year in advance for those students who do not attend a particular zoned district?

A Limited to new entrants.

Q This is a feasible thing as far as the director of zoning is concerned?

A Yes.

Q And an important criteria would be the availability of transportation facilities. You are familiar, I take it, with the Lane zone district, are you?

A Yes, among the other high schools, twenty-two high schools.

Q And it's fille d with transportation facilities; is that correct?

A Yes.

Q Subways, independent line, BMT, bus routes?

A That's right.

Q And are you familiar with Grover Cleveland zone district?

A I am.

Q And that entails Glendale, Ridgewood and also with reference to the Richmond Hill and John Adams district; is that right, and all of these districts have

sufficient transportation facilities; is that correct?

A Yes.

Q Did you know at one time students who live in Glendale, Ridgewood, Richmond Hill went to Lane high school?

A Yes.

Q And today they don't go to Lane high school; is that correct?

A Yes.

Q Now, in following the policy of the Board of Education with reference to criteria for zoning I take it in the last ten years, the furtherance of racial integration is an important part on the part of the Board of Education?

A Very much, but in priority it does not outrange the other criteria.

Q Now, with reference to Franklin K. Lane and where it's situated, it's right on the border between Brooklyn and Queens. I take it during the period of time that you were director of zoning or acting direct, Lane high school was considered as a Brooklyn school; is that correct?

A We consider it a Brooklyn and Queens school. At one time it was supervised -- at present it's supervised by a Brooklyn supervisor of high schools, the now deceased

Mrs. Donowit who was the Queens supervisor, was in charge of that school.

Q So I take it then as you say you considered it a Brooklyn-Queens school, it doesn't participate or the Lane principal doesn't attend the Queens meetings of principals?

A I should say it's considered more a Brooklyn school because of the feeder pattern.

Q Feeder pattern?

A The schools that feed into Lane are in the area, within the boundaries of Brooklyn.

Q Is it feasible on the part of the Board of Education to change feeder patterns?

A On recommendation, yes.

Q Feeder pattern?

A On recommendation of the parents and the communities in which those feeder patterns are, they are changed considerably.

Q I take it then, I can understand that any administrative body does have a great deal of pressures brought upon it by the communities. As I take it, the Board of Education has considerable pressures brought upon it?

A May I be facetious at the moment. I would say, yes,

that's an understatement.

Q May I say, Mr. Thorne, this is not a fencing type of thing. We recognize that there are great pressures which are put on the Board of Education, not only here in the City of New York but throughout the country by communities especially where there is a question of changes; is that correct?

A Yes.

Q And you heard part of the testimony here this afternoon and also this morning, for example in 1969 there was an attempt on the part the Board to meet some of the problems of Franklin K. Lane with reference to racial integration. Do you remember that testimony?

A I do.

Q And in fact Dr. Brown was going to recommend certain changes in the zoning which would take it further into Queens, do you recall that?

A Yes.

Q And you must have been part and parcel of this whole proceeding?

A Yes.

Q Could you tell the court what happened?

A There was a meeting called by Dr. Brown in response to a number of requests from leaders in the Queens section

of the Lane zone, and surrounding that they would like to discuss this whole matter of improving Lane. The meeting was held in Dr. Brown's office, I was present. There were counter-requests from the same area that nothing be done, that the lines be kept as they were. We had correspondence to that effect. I do not have it. The outgrowth of that meeting it was pointed out, what they thought could improve the situation, Dr. Brown pointed out that anything that affected the adding to Lane's boundaries or areas would have a chain reaction of course on all of the schools in Brooklyn and all of the surrounding schools in Queens, John Adams particularly. You mention Grover Cleveland would also affect Richmond Hill particularly on the Brooklyn side, it would affect Jefferson --

THE COURT: Where is Jefferson.

THE WITNESS: Just contiguous --

Q Just around here (indicating)?

A Yes. That out of that meeting grew -- because there was such a difference of opinion as towhat the community wanted as far as --

Q When you say the community --

A The communities and around, you had Woodhaven, South Ozone Park. You had Lindenwood.

Q Would the communities that would really be

affected --

A The children would be drawn from those areas.

Q From Ozone Park, Woodhaven and also Lindenwood; is that correct?

A Yes. And then of course the persons who would be affected by any changes on the Brooklyn side. Dr. Brown pointed out on that occasion that there was such a difference of opinion as to what the communities wanted. They were trying to come up with a plan which would improve the situation at Lane, ethnicwise as well as utilizationwise.

Q Did he come up with a plan?

A He gave us some guidelines as to what should be done and the plan in essence was this, we are going to equalize the exclusion from Lane. The exclusion from Lane's zone on the Brooklyn side.

Q Maybe I don't follow you. What do you mean by exclusion?

A I just meant we were going to take it out, take out certain areas, feeder pattern, all blacks they would be -- because that was the area that would be affected, and on the Queens side the same number as soon as we made what we call a block study to find out how far we would go to safely avoid affecting other schools detrimentally on both sides. We would come up with a number and then we would

actually map out the changes. It came to about a hundred and fifty blacks would be taken out of the school, a hundred and fifty whites on the Queens side would be put in. That plan was then presented to the committee that came from the various communities and the superintendent Nathan Brown said please let me know in a limited time as to the decision of the communities. The plan was turned down by the communities.

Q Was it turned down by the Lindenwood community?

A There was a hearing, all three of those hearings --

Q It was turned down by the community. The Ozone Park community and Woodhaven community?

A And it was turned down.

Q Was any consideration given to zoning Brooklyn children into the Grover Cleveland school?

A Grover Cleveland at that time had two enclaves of Brooklyn children.

Q Is there any plans today or last year with reference to zoning children from Brooklyn into Grover Cleveland?

A At the time when Grover Cleveland was a hundred percent utilized and planning a modernization for the following year that would take out of us almost from fifteen

to twenty classrooms. The enclaves were eliminated and the children were returned to the Brooklyn schools and thatopened up a new open admission program for those children.

Q For example 1971, a percentage of others, Grover Cleveland was 81.4?

A In 19 what?

Q In 1971?

A What figure do you have.

Q 86.4 other?

A 1971, the utilization --

Q The percent of others?

A 86, yes.

Q 86.4%; is that correct?

A Yes.

Q And in 1967 that was 61.7?

A That's right.

Q And apparently over a perici of four, five years there has been an increase of twenty-five percent in others attending Grover Cleveland?

A Yes.

Q Can you give an explanation to that?

A Due to the area itself, due to the residential patterns.

Q What residential patterns?

A In that area you had quite a bit of building.

Q Tell us what the residential patterns are there?

A I do not know the exact numbers of high rise and the rest in that section.

Q That's in the Grover Cleveland section?

A Yes, new housing and that sort of thing.

THE COURT: What is that, Lefrak country.

A Some of those huge developments are in that area. I do not know the exact names of the outfits.

THE COURT: Would that be cut by Grand Central Parkway?

MR. TODEL: This is the area here (indicating).-

Q That covers Ridgewood, Glendale?

A And further north.

Q Does it have a very strong community pressure there? Do they have strong community pressure groups there?

A Not unusual.

MR. GOFSTEIN: Objection, your honor. The term pressure groups has to speak for itself.

THE COURT: Except unfortunately it seems to be a term with which Mr. Thorne is familiar.

MR. GOFSTEIN: I think perhaps Mr. Todel

might --

MR. TODEL: Lower the pressure.

THE WITNESS: The only explanation to give, if you check to the feeder schools to Grover Cleveland, if you check the Grover Cleveland feeder schools to see what actually happened in each one of those feeder schools I do not have that at present. There is one thing that I should add one of the enclaves of the Grover Cleveland school which was contiguous to Grover Cleveland but in Brooklyn was not removed.

Q However, over a period of five years in the City of New York we are an adjacent borough, where you have a large increase in black students you have a decrease in the number of blacks attending Grover Cleveland; is that correct?

THE COURT: Or a decrease in percentage.

Q Percentage?

A Decrease in percentage, yes.

THE COURT: Is that a very big school or are they all --

THE WITNESS: Grover Cleveland.

THE COURT: Yes.

THE WITNESS: Grover Cleveland's capacity is

thirty-seventy five.

THE COURT: So that it's a rather smaller school in that sense than Franklin K. Lane.

THE WITNESS: Lane's capacity is 44.46.

THE COURT: Lane.

THE WITNESS: Yes, it's a smaller school.

Q As his honor pointed out there has been percentage-wise a reduction in number of blacks attending Grover Cleveland but in actual numbers in 1967 there were thirteen hundred fifty three blacks attending Grover Cleveland. In 1972 there are four hundred and fifteen blacks attending Grover Cleveland; is that correct?

THE COURT: It went from thirteen hundred --

Q Down to 415.

A In 1967 it had 1953 negros and in 1972 415.

Q And among the Puerto Rican population attending Grover Cleveland there was in 1967 316 and in 1972 there was 190; is that correct?

A Yes, chiefly from the enclaves.

Q How many enclaves are there?

A At one time --

Q For example now, how many enclaves are there in Grover Cleveland?

A Just one, but that's that huge contiguous area right

on the boundary line between Queens and Brocklyn.

THE COURT: That's on the border between Bushwick and -- the Bushwick and the Franklin K. Lane zone.

THE WITNESS: It's actually --

MR. TODEL: Over here (indicating).

THE WITNESS: They come from this area (indicating).

THE COURT: It doesn't show on that map.

MR. TODEL: No, it doesn't show on this map.

THE WITNESS: I think one map has the enclaves, the corporation counsel's.

MR. GOFSTEIN: I'm looking at the same map now, aren't those on that map.

THE COURT: It would be on the Brooklyn counterpart.

THE WITNESS: Comes right into this area (indicating). It cuts into here (indicating).

DIRECT EXAMINATION CONTINUING

BY MR. TODEL:

Q Mr. Thorne, are there available transportation facilities from the western part of the Lane district to Grover Cleveland high school?

A Some people can actually walk it.

Q And there is a bus line on DeKalb avenue?

A Easy access.

Q Some people can walk from Glendale to Franklin K. Lane?

A They could walk it, yes.

Q Short walk across the park?

A Yes.

Q There is a triboro coach which ends over there?

A Yes.

Q Crescent Street bus that comes right in from Ridgewood and Glendale, right across the park?

A Transportation is easy.

Q And there would not be any disturbance of continuity of education of students for new groups of students going into Lane's zone if that zone was changed?

A Continuity of education is a fixed thing.

Q And is there any difficulty on the part of a zoning board like your particular group to change the zone of Lane to include Glendale or Ridgewood?

A Along the basis of experience which I mentioned, the chief barrier to that would be, of course, would be the objections of the parents of children who would be involved in that move.

Q That's fine. I understand that. This has been a problem throughout this country.

A Yes.

Q And really that's the only real problem that you see?

A No, there are otherproblems. I think I mentioned these other problems, the effect on other schools, the utilization of other schools and the ethnicity of other schools.

Q Mr. Thorne, just to clear up some things for the record. I am showing you a study which was marked exhibit 5 of the exhibit attached to Mr. Anchor's affidavit which he filed with the court on a motion for summary judgment. Who prepared this report?

A This was prepared by my staff under my direction.

Q And where did the funds come from to prepare this report?

A This is the second part of a state funded project, New York State funded project. The first was 100,000 and this was a twenty-five or thirty thousand dollars extension, it's because the Brooklyn situation called for continued action.

Q Now, let's clarify for the first time there was a prior report; is that correct?

A Yes.

Q Do you have that prior report?

A I do not have it with me.

Q But someone in the Board of Education has that?

A Oh yes, we have a copy of that. That was a Brooklyn academic high school rezoning.

Q And this report was prepared at the request of Commissioner Allen's office?

A No, no. We got money from Allen, from the State. We got the money fromthe State. After we had presented a proposal to the state pointing out how important it was that we study the entire zoning of Brooklyn high schools. We had one before that privately conducted for the Queens school. It was called the Nelson report and we followed up the following year with the Brooklyn proposal, so many problems we had to ask for an extension of it but it did not come as a result of -- wholly as a result of Allen's request.

THE COURT: What was the funding for this.

THE WITNESS: New York State, it's a section called the integration ---

THE COURT: What was the funding for it, amount.

THE WITNESS: In the first was 100,000 and

this one was about 30,000. This part of it.

Q That first part is available?

A I can make it available.

Q I was wondering whether tomorrow some member of your staff could bring it here?

A Yes. I think the word extension appears in it.

Q Yes, it does. The court made mention of that and I have been trying to find out where I could get that copy. During the period of time that you have been the director of zoning for the Board of Education has there been any discussion on your level or even on a level above you in terms of the board itself of doing away with the Brooklyn-Queens line with reference to children coming from Brooklyn into Queens or Queens into Brooklyn?

A Doing away with the line?

Q Yes, in terms of having a Brooklyn school or a Queens high school?

A We don't operate on that basis.

Q Is there any difficulty that you can see other than what you call the pressures of the community?

A Objections by the community.

Q Objections by the community?

A Counselor.

Q Of reducing the number of black and Puerto Rican

students attending Franklin K. Lane high school?

A Objections to it.

Q Yes, from a zoning point of view.

A Well, we have had -- you yourself pointed out that there had been earlier -- that there had been changes, we had opped a number of children.

Q How many have you opped?

A We have a figure just brought in and I haven't seen it yet. When we op children by the very nature of that term, it means that parents request the transfer ofchildren, it's not a mandated act from the Board.

Q How many children were opped from the Lane district?

A I think the counselor just received it. Do you have that? During the lunch period I went over and had it prepared. I want to check it first before I tell you. 69-70 from Franklin K. Lane 451, going to Midwood, Sheepshead Bay, Tilden.

THE COURT: Wait a minute. That's Midwood, Sheepshead Bay. What was the third one.

THE WITNESS: Tilden and Franklin D. Roosevelt.

Q That was in 1969?

A '69, '70.

THE COURT: FDR is way over west.

THE WITNESS: 1970 to '71 from F K Lane to various schools, 269. 1971-'72 we sent 155 -- opped rather, South Shore 106, Midwood 25, Madison 24 and for this year 1972-'73, the parents took up the option for their children to the number of 156; 27 going to Madison; 79 going to South Shore.

Q This bears out the testimony of the other withess in 1969 there was some effort made and the graduating class of Ocean Hill junior high school was able to opped at that time?

A 271 and 55.

Q That there was a continuous reduction of number of children who opped?

A Who opped because of the availability of seats in the receiving school and the effectiveness of the ethnicity of the other schools that we have to consider.

Q Have you ever considered in the last year or two years --

THE COURT: Should this be marked as an exhibit.

MR. TODEL: Plaintiff's exhibit.

THE CLERK: Plaintiff's exhibit 5 for identification.

MR. TODEL: May we have it marked in evidence.

THE CLERK: Now, plaintiff's exhibit 5 in evidence.

DIRECT EXAMINATION CONTINUING

BY MR. TODEL:

Q In 1968 and 1969 there used to be a part of the Lane high school zone district called the Forest Park which involved a number of cooperatives and so on, were there community groups involved in that?

A One group and that was the Forest Park group who wrote Dr. Brown asking that they have a meeting to plead for the admission of the children from that housing project into Richmond Hill. As I remember because of the small number of children and because of the arguments presented, I don't know, the arguments presented, thirteen children, thirteen new entrants were added, taken out of Lane and admitted to Richmond Hill.

Q Was this a white cooperative?

A I don't know what the complete tendency is but I believe that it was largely white.

THE COURT: Where would that have been physically on our map?

THE WITNESS: Just above that (indicating).

THE COURT: Very close to the school.

THE WITNESS: It's right up here, right in

this area. You notice your honor equal distance.

DIRECT EXAMINATION CONTINUING

BY MR. TODEL:

Q Mr. Thorne, you are familiar with the John Adams high school zone district?

A Yes.

Q In 1967 69.9 other population; is that right?

THE COURT: That's 69.

Q 69.9 other?

THE COURT: In the year.

MR. TODEL: 1967.

THEWITNESS: Whatwas your figure.

Q 69.9 percent other?

A Yes.

Q And in 1972 what percentage other is there?

A 74.4.

Q So there has been an increase of other population in that school?

A Yes.

Q Mr. Thorne, as you pointed out equal distance between Forest Park and Franklin K. Lane, does the distance from Franklin K. Lane to Forest Hills Kew Gardens, is it closer than it is to Bedford Stuyvesant?

A The distance from Franklin K. Lane --

Q Into Forest Hills section, Kew Gardens, Richmond Hill, Glendale, is that closer to Franklin K. Lane than the distance to Bedford-Stuyvesant?

A As the crow flies or by transit.

Q By transit?

A I would have to investigate that. All of the lines you know that operate --

Q And they all operate there?

A I would have to check on the transportation map.

Q I believe in your report, Mr. Thorne, on page 4 of your report, exhibit 5, you state --

THE COURT: Wait now, there is a number of pages.

Q First page 4. You stated in the case of high schools in Queens traveling to school by bus or common carrier is already a way of life for many students?

THE COURT: Wait a minute, page 4.

MR. TODEL: Yes.

THE COURT: Line.

MR. TODEL: Second paragraph and the second sentence.

THE COURT: I see.

MR. TODEL: I have no further questions of this witness, your honor.

THE COURT: We'll have a short recess.

(Whereupon a short recess was had.)

(After recess.)

MR. TODEL: I have just one more question to ask of Mr. Thorne.

DIRECT EXAMINATION CONTINUING

BY MR. TODEL:

Q Mr. Thorne, on exhibit 5 which is the optional program for Franklin K. Lane which you obtained this afternoon. Do you know as to when, at what time of the year was the figure of 451 arrived at for 1970? Was that in June of 1969 for the '69 seminar?

A This is based on the parents who took the options as of September.

Q For September -- in other words --

A They take up the option in June.

Q Now, actually these figures do not represent really the actual number of students whose parents took up the option and then went to the school; is that correct?

A We have no record. Some of the students who took the option might have passed away during the summer, they may have moved out of the city. In the summer our records show the number of students who transferred through assignment to the schools. You would have to therefore go into

each one of these schools to which we assign the children to discover on the basis of addresses which of the children actually arrived.

Q And the fact that a child may have opped out to say Madison or Midwood, his application would then' go to Midwood or Madison; is that correct?

A Yes.

Q And then his application in Madison and Midwood would be reviewed; is that correct?

A Yes.

Q And from your experience in the Board of Education, does it occur that Madison or Midwood may in their judgment reject a child?

A The child cannot be rejected by the receiving school. It's a parental option. The parents take the option. We assign it on the basis of their ability and by the way of 98 percent of seat availability in the receiving school is a figure that we have been working on for these options, but now I think I should add to this that the parents always has the right in an option to request that the child return to the school to which he's zoned, he reserves that. How many of those did that during the year I do not know. There is no record of that except in the school, the receiving schools.

Q And if I were to tell you that the receiving schools in a few days or a few weeks send students back to Franklin K. Lane, would that surprise you, or reject them for one reason or another?

A That's not within the province jurisdiction of our office.

MR. TODEL: No further questions.

THE COURT: Well now, Mr. Thorne was testifying from a compilation earlier which I don't believe has been marked in evidence.

MR. TODEL: That's been marked.

THE COURT: But he had a compilation of school population.

THE WITNESS: Was it this (indicating) of Queens and Brooklyn? I believe the counselor has that for you.

THE COURT: But it wasn't marked in evidence.

MR. GOFSTEIN: The one from Brooklyn has not even been identified.

THE COURT: Should that be marked.

MR. TODEL: I have no objection to marking it.

THE COURT: You used numbers to it.

MR. TODEL: The numbers I used was already

in the record. I was able to get that in through Mr. Selub.

THE COURT: Well, I think the figures were put in through Mr. Thorne with respect to the changes in John Adams and --

MR. TODEL: And also Grover Cleveland.

THE COURT: Between two dates in terms of the direction of the ethnic distribution. Now, if these would show those figures for all of the Queens schools --

MR. TODEL: I think I would want to mark this.

THE COURT: It may be a useful supplement to what we have.

MR. TODEL: I have a list which was given to me this afternoon by Mr. Gofstein of Brooklyn school ethnic distribution and I'll offer it.

THE COURT: We were talking about Queens.

MR. TODEL: Queens and Brooklyn will be theoffer.--

THE COURT: This I take it will be a more inclusive list than any we had before because it would come down to the current registration.

MR. GOFSTEIN: This is up to 1972 for each

of the high schools.

THE COURT: For both boroughs.

THE CLERK: School population ethnic distribution to Queens marked as plaintiff's exhibit 6 and number 7 school population ethnic distribution for Brooklyn, that's plaintiff's exhibit 7 in evidence.

CROSS EXAMINATION B Y

MR. GOFSTEIN:

Q Mr. Thorne, there was reference in your testimony to the matter of Brooklyn Queens high schools, Brooklyn Queens subdivisions. When you consider zoning for the entire city borough lines absolute division beyond which you will not zone or over which you will not cross?

A Borough lines are not sacrosanct on the high school level, they are sacrosanct on the elementary and junior high school levels by the recent decentralization law but not on high schools.

Q Do you have examples where students would be signed over?

A The best example is the new Kennedy high school.

Q Where is that?

A Fifty percent on the border between the Bronx and Manhattan.

Q We have students between Manhattan and Bronx?

A To that school which was more in the Bronx than it is in Manhattan, but it's a fifty fifty percent.

Q And Grover Cleveland itself which is in Queens, I think you testified that it has students in Brooklyn; is that correct? Some of the students who go to Grover Cleveland live in Brooklyn?

A Yes, you have an enclave.

Q Can we just point it out? We have it on this map, I believe. Now, before you were referring, I believe to this area over here in the southeast part of Grover Cleveland (indicating).

THE COURT: Southwest part of what?

Q Of Grover Cleveland's district. Is this over the Brooklyn line here (indicating)?

A Right across.

Q This line here (indicating) is the Brooklyn Queens line, so we have it going over the borders. Is there another area further down in Brooklyn which sends students to Grover Cleveland?

A It is.

THE COURT: That's a skip zone.

Q That's a skip zone or enclave?

A Yes, a small enclave.

Q And Franklin K. Lane itself has always been partly in Brooklyn and partly in Queens; is that correct?

A Yes.

Q Now, are there also -- are there any students who through -- are there other Queens high schools other than Grover Cleveland which have enclaves in Brooklyn?

A Richmond Hill has an enclave and I believe Bryant has an enclave. Bryant is a Queens school it has children who attend it from Brooklyn.

Q So in other words both through opped admissions and through enclave zoning as well as the actual zoning of the high schools itself you cross borough lines where it's considered necessary and feasible?

A Yes.

Q I think I also mentioned for administrative purposes Lane itself was once run under the Queens high school office and Brooklyn high school office?

A It came out this morning. I agree with it.

Q Even th gh it has a substantially, the same zone throughout this period?

A Yes.

Q Now, Mr. Todel at one point asked you whether it would be possible for example for students who live in Glendale to walk into Franklin K. Lane, assuming that there

was some easier accessibility here. Now, looking at the map, some of the other high schools just at random, would you say for example that it's possible for a student who lives here near the Queens County, in the Hillcrest area to walk to Jamaica?

A Hillcrest?

Q A student here (indicating) for example who is on Hillcrest border couldn't walk to Jamaica?

A Yes.

Q Or students from here possibly could walk into the Jamaica zone into Hillcrest?

A Yes.

Q Is it possible here for example, students in the Bayside area who have to travel from the Bayside high school possibly could be a few blocks away from Cardoza high school?

A According to where the zone line falls.

Q In other words, the zoning lines are such that for any given zone it's possible to find some children within the zone who might with greater ease walk to another school but here perhaps at a greater distance from the school in their own zone?

A Yes.

Q And this is true of course not only in Franklin

K. Lane?

A All over the city.

Q Would you say generally speaking, looking at the high school maps that high schools are usually in the center of their district geographically?

A No. High schools are not geographically in the center. One of the reasons is the time of the opening of the school and the effect that it has on the zones of other high schools, centrality has never been a characteristic of zoning high schools.

Q Could I refer you to the zone of Hillcrest high school. What year was Hillcrest opened?

A Just last year.

Q Now I refer you to the area here (indicating) in the extreme northwest part of the Hillcrest zone itself, just south of Forest Hills zone. The students live over here (indicating) have to travel -- who live near the Forest Hills have to travel down to Hillcrest?

A Part of them.

Q Did you also have objections when you drew this line from parents in this zone?

A Yes. The Forest Hills parents in the main objected strenuously because on the tradition of Forest Hills and the rest, other factors -- but a population had to be gotten

for Hillcrest, the city having invested so much money in building it.

Q Mr. Todel asked you some hypothetical questions as to whether certain areas which are now in the Grover Cleveland zone might possibly under some plan be zoned into Franklin K. Lane without referring what would happen elsewhere, he also asked you what some of the problems might be in rezoning in that particular fashion. I think you commented that certainly one problem that you might face is sort of an obviously type of community feeling about this, perhaps some pressure. Would it be accurate to say that you face community pressures when you undertake any zoning change? Are there other difficulties from some groups or other?

A I'm objecting to the word pressure, counselor. We call it objections to it. And those objections fall into both pro and con. Many encourage us and others object, it's more a matter of registered objections or registered approval from the community.

Q You wouldn't feel that comfortable with the form pressure groups?

A The Board of Education as far as my office, I make the feasibility studies and the decisions are made by the Board of Education and therefore you would, I say more

advantageous to get a statement from the extent of which the Board might yield to pressures from them but not from my unit.

Q Now, Mr. Todel asked you for example what would happen -- Ridgewood and Glendale, Grover Cleveland districts, why can't we put them in the Franklin K. Lane area aside from the possible or probable objections of some people there. Could you elaborate on some of the other things which you told him which would be relevant tosuch a decision? I believe you mentioned utilization factors in other schools, ethnicity in other schools, what kind of rezoning might be required by such a plan for example? What kind of effect might it have?

A Well, for one thing Grover Cleveland which was highly relieved, highly relieved by the removal of those enclaves, it's utilization has almost reached the point where it was before we moved the enclaves, I believe 1972, it's 138 percent utilized, a question would be raised on the utilization, we would have to go into the extent of which the ethnicity would be affected, we would have to make block studies in which children would be moved and what color those children are to be moved. If you are interested in ethnicity as far as Lane is concerned, that's a problem we are always faced with. We would have to also consider the question of, the

other schools that are now operating or any schools that are planned, what effect would that have on them on the ethnicity and the utilization of those schools. It is not possible to just move a group of children or one area in which children live, put in another school without a chain reaction or effect.

Q And you also mentioned the fact that other schools will be constructed -- are certain stages of planning right now -- and I think we'll go into this later but I just want to bring that point out.

A Very good example if you'll permit me. We are having community meetings in Beach Channel schools which is in the Rockaways and we are making a study of every high school in the whole borough of Queens to see what effect the opening of that school in as isolated a place as Rockaway will have on Springfield Gardens, John Adams and Lane and all the other schools, that's what I mean by this chain reaction of the opening of a new school or the rezoning of another school.

Q Is it safe to say were we just to grab this area out of Grover Cleveland and put it here (indicating) this is an area not as isolated, the chain reaction would almost be limitless, you could not simply just look at this area and say well it has more white, let's put it in here

and that's the end of your problem?

A That's right.

Q Now, reference was always made for the figures of number of students who attended Franklin K. Lane and had gone or opted to other schools and again you emphasize it is an optional program. You cannot force a parent, black, Puerto Rican or white to send their child to another school even if that would seem to promote integration?

A Right.

Q You were asked also about the particular small section in Queens known as Forest Park, I want youto remember what you stated. You believe the numberof children involved was a very small number?

A It was so minimal that I remember it, there were thirteen children.

Q I believe back in May in Mr. Selub's testimony he testified like there may have been fifty or sixty?

A Thirteen children.

Q This is the only change. We are talking about an area in 1969 that was taken out of Franklin K. Lane.

Could you briefly describe, I think you were asked about this but just briefly, some of the procedures involved in zoning questions, whenever a change comes up a proposal for a change, who is consulted, how does the

plan go up through the works?

A The first step is notification to the community, local school boards that are affected. You are talking about the high school level -- the principals of the high school affected and parent groups affected are invited to attend meetings other places, they're held together, other departmental principals come up in to meet the superintendent of that borough or boroughs. The purpose of that meeting or the series of meetings is to determine what the community wishes.

THE COURT: How is the community notified.

THE WITNESS: It's notified by a letter that there will be a meeting through the PTA.

THE COURT: There is no normal advertisement.

THE WITNESS: Just a communication.

THE COURT: To civic groups.

THE WITNESS: The PTA, the community groups in the area, the community groups in the area and of the school personnel who will be affected such as principals, representatives of the central zone unit usually attend these meetings, usually as resource as far as giving information as to what the status is, the ethnic involved, the

registers, anything in the way of trends and that sort of thing. Out of that meeting will come some suggestions to the superintendent in charge of the borough, the area as to what is desired by the community and by the school people. The borough superintendent then consults with the zoning unit and he asks us to make a study of the area and to come up with some kind of a suggestion as to a working or tentative plan, that is usually presented to another meeting or other meetings, series of meetings. This is what we really come up -- going out of what you suggested you want, that is revised and refined as a result of the meetings. After that the plan is then presented as a tentative plan to the office of the deputy chancelor who studies it, points out perhaps some weaknesses, something which has been omitted or should be taken out of our consideration. It is then presented, it's recommended by the deputy chancelor to the chancelor. The chancelor then either rejects it or accepts it and it's returned for public hearing in terms -- in the area where it is to be presented, and then there is an appeal

procedure which is printed which any group or any individual in the area objects to it can inform the chancelor as to their objections and he acts on their requests for an appeal.

Q In this whole process --

A There is one other step, that is the Board of Education gets it as a recommendation from the chancelor and the Board of Education acts on it.

Q And in this process, the central zoning unit is essentially a service unit?

A That's correct.

Q And objections or pressures, whatever we call them, we will call them by objection by various groups they would not be directed at you, they would be directed to the people who have the power to make the decision?

A If we get the bow and arrows, we merely refer them to the office of high schools or the office of the deputy chancelor.

Q And they would try and consider all the variables including all the expressed views.

One thing you said, the chancelor either accepts or rejects what has been developed and you mentioned a hearing stage?

A The hearing stage comes if it is necessary because

there may be no objections to it. There may be no objection to the position that the chancelor takes on it.

THE COURT: But after the -- if the chancelor approves it say.

THE WITNESS: He makes his recommendation.

THE COURT: Is there a point then at which there is some kind of formal hearings on it?

THE WITNESS: No.

THE COURT: That goes to the Board of Education?

THE WITNESS: As a recommendation.

THE COURT: There is never any point at which there is a formal notice to appeal in every area affected and a public hearing, no such procedure. I read from a news bulletin on regulations under which students will be zoned next fall -- Chancelor Scribner in the bulletin says a tentative plan is submitted --

THE COURT: What is that that he's talking about.

THE WITNESS: The plan for the school, the zoning plan.

THE COURT: What are these public hearings

to which he refers? Are they a formal statutory step.

THE WITNESS: He sends out notices of that.

THE COURT: That's only notices to whomever he can think of, PTA etcetera.

THE WITNESS: This in its full public discussion precedes the adoption of the final plan.

THE COURT: What step if any in terms of notice to the people affected that has some certainty of communication to them.

THE WITNESS: Your honor, I have in my briefcase the entire procedure for the zoning of the high schools. May I get it, and I think it will answer your question.

MR. GOFSTEIN: I heard you referring to an article 38 proceeding.

THE COURT: What I was after was this, we are both being increasingly conscious that government can't do much of anything nowadays without notice and an opportunity to be heard for every person who is likely to be affected by governmental action. Nowadays you can't even, as it turns

out, and even if you try twice, put up a federal prison in Manhattan without having an impact study and every other thing that God ever thought of, so I was just wondering here what is it that the authorities must do as distinguished as what, as a matter of being sensible and fair minded people. I suppose in part make sure they don't run into a buzz saw but also so that they can effectively canvas interested opinion and have some sense of whether they are moving in a right direction.

MR. GOFSTEIN: I might point out, your honor, since the Board of Education obviously takes the ultimate step of approving zoning changes any act taken at a public meeting --

THE COURT: Is that right.

MR. GOFSTEIN: If it was taken in executive session it would simply be a discussion.

THE COURT: That's exactly it. We are not talking here, are we, about formally noticed hearings wherein you would have a formally public notice in that city publication, for example that publishes other hearing notices. The kind that we hear over WNCC or see over

Channel 31. At times where there is a formal meeting on notice just like a meeting of the Board of Estimate and an apportionment, if we still have one --

MR. GOFSTEIN: I think just the first part.

THE WITNESS: I can think number procedures -- number 2, section 2 and section 3 and 4 would answer your question, your honor. It says --

THE COURT: Unless you would prefer to mark it. You think it makes sense to do it that way so the record will indicate that an effort was made to make --

THE WITNESS: We are now faced with the movement of decentralization and the reluctance of headquarters to in any way mandate. I believe I'm speaking for headquarters when I say that the chancelor and others on his staff will ask the divisions and units and personnel in the areas involved to pass on to interested individuals or concerned [illegible]ls of the hearings on this particular plan or proposal. They in turn will see to it that all persons, all parties involved given an opportunity to a hearing and it's mentioned

in two procedures, II procedure, III and IV. There is even a time limit within which all persons can make appeal.

THE COURT: Mark it.

THE CLERK: Marked for identification as plaintiff's exhibit 8.

THE COURT: Have you had a chance to read it over.

MR. COPSTEIN: Not in this form.

THE COURT: Why don't you take a moment to glance through it, see how you size it up and whether you do or don't want to offer it in evidence.

MR. COPSTEIN: Your honor, I would not like to introduce it at this time.

THE COURT: Consider it. I'm thinking about two things in this context of course, here is an Eastern District label I better take care of that and find out where it belongs. It belongs on one of these maps, the glue dried out. We do have the situation where there isn't any obligation of law to go through a set of procedures. If procedures have been voluntarily formalized and adopted there may be some kind of

obligation to use them uniformly and not arbitrarily. In other words, we get this mostly in army cases. The army doesn't have to do certain things but if they adopt regulations which channel their procedures along certain due process lines and once having adopted those they become obligations owed to each enlisted man and they must follow them. There wouldn't be anything preventing them from abolishing them and proceeding some other way in the future. I was just wondering whether the formalization of procedures perhaps not mandated by law has been carried to the point where it would be simply correct to say that these were adopted after certain kinds of formal notices etcetera, and whatever value is to be attached to action taken after notice and an opportunity for a hearing should be added to the weight of what would otherwise normally attach to official decision. It becomes then something a little bit more than official decision. It becomes official decision which has made a sensible appeal to represented representations. I'm afraid I interrupted your frame of thought.

MR. COFSTEIN: I think I'll hold onto this document for a while. We can pursue this line of questioning with other witnesses.

I have no further questions at this time but will probably recall the witness on redirect examination.

MR. TODEL: May I examine the witness.

THE COURT: This is on redirect.

MR. TODEL: Yes.

REDIRECT EXAMINATION

BY MR. TODEL:

Q Mr. Thorne, you mentioned for example, JFK fifty percent white and fifty percent black and Puerto Rican?

A I did not say that.

Q Fifty percent from Manhattan and fifty percent from the Bronx and the fifty percent from Manhattan comes from central Harlem, north Harlem area?

A Yes.

Q And the other fifty percent comes from the Brooklyn Riverdale Fordham Road area?

A It's not that wide in the Bronx, it's more limited to the area closer to --

Q That would be the Riverdale section of the Bronx; is that right? In fact that school was built there

for the specific purpose of integration, do you recall that?

A We do not built any school specifically for integration, your honor. The reason for that division was when he school was planned it was planned as additional services to accomodate northern Manhattan and the lower part of the Bronx. It was the initial intent.

Q And the school was built in that particular section to accomodate the northern part of Manhattan and Harlem and the Bronx because actually the school was located -- part of it is in Manhattan, part in the Bronx, almost like Franklin K. Lane?

A Yes.

Q Mr. Cofstein referred to the Hillcrest school which was just like over the line, right into the Jamaica area, I believe; is that correct?

A That is correct.

Q Do you recall the thinking that went into making the line so close to the school? Do you recall the thinking that went into that?

A No, I don't. I believe it came up at the time that they were considering comprehensive schools, I do not recall, that would come within the province of school planning and research.

Q Do you recall perhaps Mr. Anchor may have said

we do not have two other high schools in the city that are as close together as Hillcrest and Jamaica high that creates problems for zoning but Hillcrest is a good area, it's a white area but it has a black area to the south close enough to make integration very feasible, two schools about six blocks apart?

MR. COFSTEIN: Objection. Mr. Anchor is one of Mr. Todel's prospective witnesses. Since he is available I think it's kind of out of line to ask Mr. Thorne to comment on that. I think he's reading from a newspaper quotation.

THE COURT: This is in Mr. Thorne's --

MR. COFSTEIN: I think Mr. Thorne already testified that his responsibility in regard to zoning, as head of the zoning area is quite distinct. I would suggest as statements concerning Mr. Anchor where the schools shouldbe built, who Mr. Todel would like to question tomorrow --

THE COURT: Here we have earlier an expression of the factors taken into account by Mr. Thorne in connection with the zoning, and I take it that here would be a rather special situation with respect to one of the factors which

I think Mr. Thorne pointed out was not a dominant or the dominant factor but is one of the constellational factors taken into account, this is more of the same.

MR. GOFSTEIN: But how that factor is applied in any one case is to be decided not by Mr. Thorne but by Mr. Anchor and others.

THE COURT: The next question would be was that part of your recommendation.

MR. GOFSTEIN: Just suggesting that a quotation from deputy chancelor -- he should be the person to interpret his thinking.

THE COURT: I think you'll get a good fair crack at it, don't you.

MR. GOFSTEIN: I'm sure we will.

REDIRECT EXAMINATION CONTINUING

BY MR. TODEL:

Q Mr. Thorne, your particular division participated in the working out of feasibility studies with reference to Hillcrest high school?

A On consultative basis.

Q Then you made the study and made certain recommendations on how lines should be drawn with reference to all the factors, the criteria going into zoning?

A On the basis of what the community hearings had produced and the direction of the deputy chancelor and the office of high schools.

Q And one of the factors which you took into consideration that is south of Hillcrest high, there was a large black population?

A Yes.

Q And was taken into consideration?

A It was taken into consideration as it's taken into consideration of any --

Q I don't want to just end your problems in the words of Mr. Gofstein by saying you take Ridgewood or Glendale or Maspeth or part of Richmond Hill and then put it into the Lane zone. I don't want to end your problems. I may want to create problems in this respect. I think you understand if any changes are to be made they would have to be changes made elsewhere; is that correct? Here we have a situation where you have a predominantly white area in the Grover Cleveland section, the zone, and here you have a predominantly black area in the western part of the Lane zone. From your knowledge and experience, do you not think that an attempt should be made in that area to work out an integrated school system.

MR. GOFSTEIN: Objection, your honor.

A It's not within my province, not within my jurisdiction.

MR. GOFSTEIN: We're here to determine, your honor, perhaps what is happening with Franklin K. Lane. There may be 20,000 possible remedies. If any remedies at all are needed I wonder whether this trial is the proper place. I'm sure if Mr. Thorne should do the professional job any one of these changes would require a massive study of all his possible effects, how about if we take a little from here and a little from here, I think we have established --

THE COURT: All that Mr. Todel is saying at this point if you look at a point of continuity between the Grover Cleveland zones of 1972 and the Franklin K. Lane zone of 1972 isn't a block for block or a student for student transfer to altering the line there, something that could be done and would be self-limited in an abstract academic question, whether it should be done is obviously a different problem but all he's saying where you do have that condition of continuity, can it not be done.

THE WITNESS: My answer to that would be all things being equal, yes, but all things are

not being equal in that situation and we have so many variables to consider.

MR. TODEL: I'm fully aware of the variables.

THE WITNESS: It is just typical of the many integration situations on the high school level that we are faced with.

MR. TODEL: And I fully understand that Mr. Thorne and I understand the problems where you have in the heart of Boys High district or other districts throughout the city the real problems you do have, but here in a situation where you do have which appears on this map, don't you feel that the board has some responsibility and had responsibility in the last eight years in doing something in that situation.

THE WITNESS: Counselor, the board and all of its service agents, the central zoning unit being one of them, has been cognizant of Franklin K. Lane's situation for the last eight years and has made any number, and the record will show it, any number of efforts to solve that problem short of detrimentally acting on all of the other Brooklyn high schools and most of the Queens high

schools. It would take me quite a long time to year after year to indicate what has been done by headquarters in the interest of Lane. I would like to point out very definitely that Lane has been actually -- because of the publicized situation -- I don't have to go into details, newspapers and television and the rest, has almost got the preferential handling at the board. If you will study the open admission program in Lane as compared with other high schools in Brooklyn you will discover that on the utilization basis where we should perhaps send a large number of persons on the open admission program into Lane, Lane has remained untouched on the open admission program, that is only one thing.

Q I understand that, Mr. Thorne, and do you know for example yesterday afternoon in Lane high school a young girl's hair was burnt. I recognize the problem that you do have that occurs in the school?

A I do not wish this to be a verbal battle here. What you just said unfortunately for New York City and it's school system is typical all over the city, the security problem has been publicized as one of the great problems,

Lane is not alone in this problem of attacks on persons of all ages.

Q Just one furtherpoint, you mentioned or Mr. Selub had testified to the fact that there were renovations made at Lane high school and the fact that even though there were renovations being made at Lane high school where a number of classrooms were put out of service, they still received the same school population. However, you testified that Grover Cleveland they had substantial renovation and classrooms were put out of use and there was a reduction in the number of students there?

A Right.

MR. TODEE: No further questions.

MR. COFSTEIN: Your honor, I have just one further question I can call it recross.

RECROSS EXAMINATION

BY MR. COFSTEIN:

Q Mr. Thorne, just when you were asked those questions about Grover Cleveland again, I don't want you to draw new lines here in court, but is it also true --

THE COURT: If I may, maybe it can be dealt with simply, I think what the question asked and the answer which perhaps may not quite have been given, for example if you look at the

green dot and go directly north of that across the park and take in an area of so many blocks in Glendale and at the same time extend the Grover Cleveland, deeper into the Bedford-Stuyvesant area there near but not quite at the westerly end of Franklin K. Lane's territory, wouldn't you be doing a self-limiting thing that could be done on a child count basis to the extent your statistical data enables you to count children by blocks, by registration or otherwise? I would assume that the answer to that would have to be in the abstract, yes, but the number situations in which it can do that is minimal and you are never going to get much change perhaps but if you are talking about major relief then the whole thing becomes an interdependent study; is that it? I think the technical point that Mr. Todel wanted to bring out, remember we are talking in terms of taking seriously, opting out, that talks in terms of a hundred and fifty students, a hundred and fifty five students. Now, if we are going to talk about that as in the school of forty-four hundred registrants, that is a material advantage and allowing for the fact that that has

other implications as well because it involves other factors as well. Such modest little transfers are things that become relevant and perhaps that's all that Mr. Brown was talking about was some such modest little transfer, but at the same time I'm afraid that they are also the modest little transfers that always turn out to be exactly equivalent to just mildly stirring up the hornet's nest but doing it very differently which I take it is what happened to the Nathan Brown project, it just stirred up a hornet's nest.

MR. GOFSTEIN: I just wanted to among the other factors, I would like to have Mr. Thorne bring out even this easy possible solution.

THE COURT: I don't say it's easy.

MR. GOFSTEIN: I didn't mean that a more modest type involving a smaller area, even in some areas, is it not true even solutions like this can be misleading on the map because of a factor, for example the number of parochial school children in a white area had a high percentage of children going to parochial schools you could zone and not gain many white children. Is this also a situation you face in Queens.

THE WITNESS: I believe I mentioned and you referred your honor what has been suggested for future -- as a future possible solution was worked out in terms of the feasibility study and presented tothe community in that area and it was rejected.

RECROSS EXAMINATION CONTINUING

BY MR. GOFSTEIN:

Q Also in regard to the fact that John Kennedy high school was mentioned which was a new school, in regard to the building of new high schools in the City of New York in the past ten or fifteen years, have these high schools been built, have any of them been built in ghetto areas or have they been spread out in more white areas?

A For a considerable time there was a legislative -- you remember there was a legal act, building of schools in ghetto areas that no longer controls us but I would say definitely that the policy of the Board of Education, and that's within the province of my unit to judge plans on the basis of how they related to policy, not to build if possible in ghetto areas, not to build junior high schools in ghetto areas.

Q In that one particular form of zoning device where new schools are placed generally, they are placed in

such a place to promote integration as far as possible?

A Yes.

THE COURT: That was the problem I had in the Branch case exactly where they are talking about a new school building to be built right in the densely populated part of Hempstead town in which most of the citizenry was black and that's what was objected to, the theory being if you built it elsewhere then you would be building towards integration rather than inte-grating, integration I believe Commissioner Allen did do something about it but I forget what he did. That wasn't the City of New York.

MR. COFSTEIN: No further questions.

I have one request, perhaps slightly out of the ordinary. I believe Mr. Todel intends to call two more witnesses tomorrow, Dr. Scribner and Mr. Anchor, and I don't know how long that will take along with the cross examination. You are probably aware I personally received this case about a week ago.

THE COURT: The City got it a couple of years ago.

MR. COFSTEIN: Aside from any personal hard-

ship I've been working along with many many other cases on this almost non-stop. My main concern that the records of the Board of Education is a very strong one, all I request is that I be allowed to start the direct case on Monday rather than immediately at the conclusion of Mr. Todel's case.

THE COURT: Let's see how we get along. I'll do what I can. I don't know what's going to happen to us next week. It may be feasible, don't lose hope.

MR. TODEL: One of the things which I didn't advise the court through the law clerk and also through Mr. Gofstein, this case was set down for the eleventh, a day after I made service on the subpoena, I learned that Mr. Gofstein just got the case. I tried to locate his superior to find out who was handling the case and I advised your law clerk that I was ready to go ahead on the eleventh and Mr. Gofstein requested an adjournment for Wednesday and in view of the fact that your honor would hold this time available for WEdnesday we did proceed today rather than trying to proceed yesterday or on Monday, and I told Mr. Gofstein that I'm going on vacation on the twenty-

first. I just don't see in terms of any further adjournments in this matter.

THE COURT: We have to try and do everything before you go away, that's all.

MR. GOFSTEIN: I can just repeat I have had sufficient time to go through the records to believe the Board of Education has a very strong case. I want to make sure that we put it in adequately. I have major witnesses. I haven't been able to talk to those witnesses. My only consideration, I'm not asking for anything to make it convenient for me or make an easy schedule --

MR. TODEL: My examination of Mr. Anchor and Mr. Scribner may take about ten minutes or so. Mr. Anchor, fifteen minutes.

THE COURT: We'll do what we can.

MR. GOFSTEIN: I know it's an unusual request. I understand the court's calendar, I hope the court will give it some consideration.

* * * *

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* * * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

CHARLES DE FELICE,

Plaintiff

-against-

71 C 502

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK,

Defendant.

----------x

United States Courthouse
Brooklyn, New York

December 14, 1972
10:00 A.M.

B e f o r e:

HONORABLE JOHN F. DOOLING, JR., U.S.D.J.

HENRY LE GENDRE
ACTING OFFICIAL COURT REPORTER

APPEARANCES:

MORTIMER TODEL, ESQ.
Attorney for Plaintiff.

NORMAN REDLISH, ESQ.,
CORPORATION COUNSEL, CITY OF NEW YORK
Attorney for Defendant.

By: DORAN GOPSTEIN, ESQ.

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(1)

MR. TODEL: May I proceed, your Honor?

THE COURT: You may.

MR. TODEL: I call Mr. Bauman.

J A M E S J. B A U M A N N, having been duly sworn by the Clerk of the Court testified as follows:

DIRECT EXAMINATION

BY MR. TODEL:

Q Mr. Baumann, where were you born?

A I was born in Brooklyn and I have lived in Ridgewood, Queens area of Ridgewood since 1945, 1946.

Q What type of work do you do?

A I am a high school teacher.

Q And where do you teach?

A Franklin K. Lane.

Q How long have you been teaching in Franklin K. Lane?

A Since February 1st, 1967.

Q Where did you go to school, here in the City of New York?

A Yes.

Q What high school did you go to?

A Grover Cleveland High School.

Q Do you live in the Grover Cleveland area?

A Yes.

Q Where do you live in Queens?

A I live on Putnam Avenue, about 200 feet off Forest, it's within --

THE COURT: 200 feet?

THE WITNESS: 200 feet off Forest Avenue on Putnam. It's within walking distance of Grover Cleveland.

Q And are you familiar since you have been a resident of Brooklyn and Queens all your life and attended Grover Cleveland High School and also were a teacher in Franklin K. Lane, are you familiar with the transportation facilities in that particular area?

A Yes, I am.

Q Now, would you describe to the Court what the transportation facilities are that are available from the Western part of the Franklin K. Lane to Grover Cleveland?

A Well, basically there are three subway lines or elevated lines that run right through the western end of the zone. You have the Fulton Street line, Canarsie --

THE COURT: That's Fulton Street?

THE WITNESS: Fulton Street line, Broadway line which is the QJ and the 14th Street, Canarsie line I think the designation is LL now.

Q And that's in the western part of the Franklin K.

Lane zone?

A In the western part of the zone which is Brooklyn and those three lines pretty much cut up the western portion of the zone into about three equal parts geographically, and there are also some bus lines that crisscross in there that I'm not familiar with, but that transportation system in there could very very easily feed into Grover Cleveland High School.

THE COURT: When you refer to the Fulton Street line, are you referring to the underground subway line.

THE WITNESS: I don't know whether it's underground at that point or not. Some of it is elevated.

THE COURT: When it gets to East New York -- but that's the one you are referring to.

Q Is there a subway which goes directly from the western part close to Grover Cleveland?

A That would be the Broadway train, the Jamaica train, the QJ. It runs over the Williamsburg Bridge comes along Broadway right through the middle of the zone, swings down here (indicating).

THE COURT: Without transfer?

THE WITNESS: Without transfer. Canarsie

line runs right through the middle of the zone this way (indicating).

Q The lane which goes from the western part towards Grover Cleveland?

A Canarsie Avenue line runs up this way (indicating).

Q Is there a bus line where children can get off the Canarsie line to go to Grover Cleveland?

A Yes, DeKalb Avenue bus.

Q And those are the --

THE COURT: Where is Grover Cleveland located?

THE WITNESS: Six or seven blocks, maybe eight blocks at the most. Grover Cleveland is here (indicating).

THE COURT: On what street?

THE WITNESS: It's on 21, 27 Himrod Street or the corner of Glenview Avenue. A DeKalb Avenue bus that ends right at the corner of the school. It runs down Stanhope Street as far as Cypress Avenue or Seneca Avenue and swings onto DeKalb and runs down DeKalb to Broadway. Some students that would be coming from this area (indicating) would be taking the Broadway line to Kosciusko and take the DeKal Avenue bus or take this to

Wyckoff Avenue and take the DeKalb Avenue bus, it wouldn't be this terrible. This trip on the Canarsie line to Eastern Parkway would be about fifteen minutes because that's the way I came this morning.

THE COURT: Until you get to the bus stop?

THE WITNESS: Yes.

THE COURT: And actually I would imagine on most occasions the kids wouldn't even take the bus because it's only a short walk, it's about six blocks?

MR. GOPSTEIN: Can I ask the purpose to this line of questioning.

THE COURT: Accessibility.

MR. GOPSTEIN: What I'm getting at is this. We are here to draw all possible lines. We could be here for months talking about all possible transportation routes.

THE COURT: I believe I've made it clear throughout that I am not going to be too strict and that the limits of my authority in the absence of subsequent history in the case is to say what may not be done and not to tell the Board of Education how to do its work, but the justification of the

line now drawn rest in part on such consent as accessibility of Franklin K. Lane people living in different parts of the district and this accessibility of other school houses to students living in the Franklin K. Lane district.

MR. GOPSTEIN: It would seem to me, your Honor, though for plaintiff to make their case they have to show, they have to show that certain areas were cut out of the Franklin K. Lane zone. Perhaps even as they tried to do yesterday, concrete proposals were made that almost were adopted not simply to go and to take all other possibilities. It seems to me that's the kind of thing that may be relevant at a much later stage in order to make the case which is an allegation -- I think they have to not only bring in which is really hypothetical possibilities, we should go in and discuss transportation possibilities for every district on the border and be there for weeks and weeks.

THE COURT: No, I'm sure that common sense would break through and we would put the maps in.

MR. GOPSTEIN: I don't think the witness is testifying to any plan that has been proposed.

THE COURT: I think the argument you make if this comes down to a question of reviewing discretion, that has been exercised without invidious standards being invoked, that then we are way behind the proprieties of the case. But as I understand Mr. Todel's approach at this point, he's concerned to show that the present line which he suggests is discriminatory is not saved from invidious discriminatory methods by considerations of transportation and other necessities because if it turned out that it was a Berlin Wall that existed somewhere, well it would explain what it explained or why and perhaps to some extent an automobile highway like Queens Boulevard or Adams Street which is almost impossible to cross on foot unless you have nine lives.

DIRECT EXAMINATION CONTINUING

BY MR. TODEL:

Q Mr. Baumann, could you tell the Court what transportation facilities other than the subway or elevated trains there are from Ridgewood Glendale to Franklin K. Lane?

A It's the number 13 bus which is the Crescent Street bus which begins at Gates and Myrtle Avenues which is right on the Brooklyn/Queens border in Ridgewood. Myrtle and

Wyckoff there is a three street intersection, Wyckoff, Myrtle and Gates, and the bus begins at that point. It runs up Gates Avenue --

THE COURT: Which bus is this?

THE WITNESS: Thirteen Crescent -- Crescent Street bus. It runs up Gates Avenue to Forest Avenue, comes down Forest Avenue to 67th Avenue, takes 67th Avenue Fresh Pond Road, Fresh Pond Road across Myrtle Avenue to 67th and Glendale to Cooper Avenue, Cooper Avenue to Cypress Hills Street and it comes down Cypress Hill Street to Jamaica Avenue and it makes a turn off Himrod and goes down to Spring Street. This point is within walking distance of the school (indicating). That bus runs through the Queens portion of Glendale.

BY MR. TODEL:

Q That goes through the cemetery?

A It goes along Cypress Hills Street across the Interborough Parkway.

Q Now, is there a private bus which also operates in Queens?

THE COURT: You mean one that is now owned by the MTA?

MR. TODEL: Right.

A The Triboro Coach Corp. operates a bus line that runs along 80th Street in Glendale and if I can find it dead ends at Myrtle Avenue and 80th Street. It runs through the middle of Glendale into Rego Park and Maspeth, runs north into Queens, it dead ends here (indicating), just on the northside of Forest Park. Franklin K. Lane in a straight line is half a mile to the south. Now, there is a highway that runs through the park and I don't see any reason why it couldn't be changed --

MR. GOPSTEIN: Objection.

MR. TODEL: I don't see why that line --

MR. GOPSTEIN: Now, he's testifying to the proposed zone line --

THE COURT: Well anyway --

Q In other words, this bus begins at the northside of Forest Park which is just a half mile away from the school.

A And that continues --

Q And that continues all the way up?

A Into Queens.

Q Up into the Newtown zone?

A I imagine it runs through part of the Forest Hills zone part of the Grover Cleveland zone.

THE COURT: But it comes from Maspeth?

THE WITNESS: It begins on Myrtle Avenue and 80th Street and then runs pretty close to due north in through the Borough of Queens.

Q And 80th Street is about a half mile from the school?

A Right.

Q And there is an access road through the park?

THE COURT: I mean, where does it come from, what children would it be delivering to the north-side of Forest Park?

THE WITNESS: This area in here is Forest Hills portion of Rego Park-Glendale, and the bus runs north on 80th Street up to, I think its Dry Harbor Road. It runs right up to the Newtown Road primarily, so it's basically this area here (indicating).

THE COURT: That would be the Newtown High School zone?

THE WITNESS: It would take in Newtown and Forest Hills zone.

THE COURT: The Newtown what?

THE WITNESS: Newtown-Forest Hills High School zone. The bus runs up 80th Street along this way by St. Johns Cemetery this way (indicating).

Q Now, are there any transportation facilities on the east end of Franklin K. Lane which could bring children from other zones?

A The Jamaica Avenue line runs past the school and stops at 168th Street in Queens. This area in here (indicating). We are talking about -- would be Woodhaven, part of Richmond Hills, even part of Kew Gardens, that line continues into Queens.

Q Does it intersect with any other lines?

A There is a free transfer point from Queens Boulevard bus dead ends at Jamaica Avenue line, that would be approximately here (indicating), Queens Boulevard stop on the Jamaica Avenue line.

Q And the Queens Boulevard goes sort of northwest?

A Runs up this way up to Forest Hills and Elmhurst.

Q Mr. Baumann, as you are standing there, yesterday Mr. Thorn who is the Director of Zoning pointed out to a district or part of the Grover Cleveland District which went into Brooklyn, and I'm directing your attention to the westerly part of Brooklyn in this little area over here, and he says that's in the Grover Cleveland zone and Grover Cleveland does go into Brooklyn down this particular area here (indicating)

A I'm familiar with that area. That area has been traditionally known as Little Italy, it's predominantly

Italian. There is an influx of Puerto Rican people, not too many Blacks that I am familiar with, but down certainly as far as Wyckoff Avenue which is down into Brooklyn, this is still predominantly White.

MR. GOPSTEIN: I thought the witness was being brought here to testify as to transportation lines rather than the zoning changes. Now, he's testifying to a very rough ethnic estimation of a neighborhood, I don't see the competency.

THE COURT: I think we have other and better evidence of it but he says he lives in the neighborhood broadly and has gone -- went to Grover Cleveland High School.

MR. GOPSTEIN: What is it relevant to testifying at this point.

THE COURT: As I said if it isn't borne out by other data it wouldn't have any relevancy, it's his impression of it. I understood myself that the so-called Little Italy area is falling apart, which he confirms.

MR. TODEL: No further questions.

CROSS-EXAMINATION

BY MR. GOPSTEIN:

Q I presume what you testified to that you would not be familiar with transportation patterns in other parts of Brooklyn or Queens, at least not as much as you claim to be in this area?

A What other parts of Brooklyn and Queens are you referring to?

Q Let's say the southern part of Brooklyn, getting further north, any of these areas (indicating)?

A In the southern part of Brooklyn, I'm not familiar with the northern area of Queens. There is not that much transportation to be familiar with.

Q You wouldn't have the same familiarity with the transportation area that might be involved zoning of schools down here (indicating) as you would be in the area where you live?

A No.

Q So you wouldn't be knowledgeable about the particular transportation considerations that might go into the zoning of schools in areas other than the immediate area that you are familiar with?

A Not on a specific basis, no.

Q Did you mean to imply that -- is it your under-

standing that students generally go to school only if they can walk to school, they will always go to the school they can walk to rather than any other school?

A No, I don't think you can make a general rule like that because that's not always the case.

Q In some instances students may be able to walk to one school but for other reasons he will be zoned and perhaps it would be better that he go to other schools. My son takes a bus.

MR. GOPSTEIN: No further questions.

MR. TODEL: No further questions.

I'll call Mr. Anker.

I R V I N G A N K E R, having been duly sworn by the Clerk of the Court testified as follows:

DIRECT EXAMINATION

BY MR. TODEL:

Q Mr. Anker, by whom are you employed?

A Board of Education, New York City.

Q How long have you been employed by the Board of Education?

A About 40 years.

Q What is your present position with Board of Education?

A Deputy Chancellor.

Q What are your responsibilities as Deputy Chancellor?

A Well, I'm the Deputy to the Chancellor, in that respect I am subordinate to him the operation of the entire school system.

Q And what are your duties then?

A They run the gamut from supervising the executive directors of each of the offices, the Office of Business Administration, Personnel, School Buildings, Office of Instruction Relationships with Community Superintendents, this morning I was to run a meeting of the Superintendents of the districts in the city. I don't think it's immodest to say that there is not an area that I would not be involved in.

Q And you would be involved in zoning and so on?

A In the overall supervision, yes.

THE COURT: In other words, I suppose the Chancellor is what an industrial company would call the operating officer and your role is reporting to him?

THE WITNESS: Yes, the Chancellor in New York City is somewhat akin to Superintendent of Schools in other cities but because of decentralization we use a new term.

THE COURT: In other words, you have to do more coordinating conciliating and pacifying them.

THE WITNESS: Yes.

BY MR. TODEL:

Q High Schools in the City of New York are under the Chancellor's jurisdiction; is that correct?

A Board of Education, and the Chancellor.

Q There has been a change in the setup here in the Board of Education in the last few years.

A That's right.

Q And the community districts have a responsibility to the elementary and junior high schools?

A That was not always true. It was a time when the High Schools were under the supervision of the district.

Q But the high schools are now under the supervision of the Central Board of Education; is that correct?

A Yes.

Q And you mentioned that you were going to attend a meeting of Superintendents of the Schools? You mentioned that you were having a meeting of Superintendents. Was that of high schools or all superintendents?

A Of high schools and of all the community superintendents.

Q Now, in the table of organization of the Board of Education you have superintendents who are in charge of

high schools; is that correct?

A That's correct.

Q And do you have a superintendent in charge of high schools for each of the boroughs?

A Each of the boroughs in Brooklyn because Brooklyn is much larger than Staten Island. The Brooklyn Superintendent handles most of the schools and another Superintendent that handles Staten Island also handles some of the Brooklyn Schools.

Q And does Queens have a separate Superintendent and Manhattan the Bronx; is that correct?

A Yes.

Q Were you aware, Mr. Anker, that at one time Franklin K. Lane High School was supervised by a Queens Superintendent?

A That may have been true.

Q Do you remember Mrs. Bonowit?

A Yes.

Q She was an Assistant Superintendent in charge of the High Schools in Queens?

A Yes. I had nothing to do with the assignment at the time so I'm not familiar with the details of the assignment.

Q And for all purposes, Franklin K. Lane High School is considered as under the supervision of Superintendent

in charge of the High Schools in Brooklyn?

A Not for all purposes.

Q For academic purposes?

A Well, if I may say, the High School Superintendents in addition to their so-called zone assignments have what are called functional assignments. For example, Mr. Denbrow (phonetic) the Brooklyn Superintendent handles what's called alternative school programs. He'll be in charge of these programs at functional levels throughout the city.

Q But for example when the meeting of principals of Brooklyn High Schools are called, do you ever have meetings like that where you have meetings of the principals of Brooklyn and separate meetings for the principals of Queens?

A You asked did they ever, the answer is yes but most of the meetings are city wide meetings and their supervised by the Deputy Superintendent in charge of Instructions, Dr. Lester.

Q Are you telling me now that the Board of Education never has meetings of High School Principals according to the borough?

A I though I just said they do have such meetings but I said the main official meeting are monthly meetings conducted city wide. The superintendent of a borough may very well have meetings of less official business with the members of

his borough.

Q Who would be the superintendent who would call meetings of the principals in Brooklyn?

A Well, I think I said there was a meeting, I believe I said last week of the principals in Brooklyn to which the principals in Manhattan was attended and that was called by Dr. Lester.

Q Maybe I'm not --

A If you're asking for a meeting exclusively, that would be called -- at least a section of Mr. Denbrow's --

Q Would Franklin K. Lane go to that section?

A Yes.

Q It would not go to the Queens section?

A No.

Q Do you know for example that Franklin K. Lane for support purposes is considered a Queens school?

THE COURT: For what purpose?

MR. TODEL: Support.

THE WITNESS: I'm not familiar with the method. They are not divided on a borough basis. Vocational High Schools have a separate unit, I'm not familiar with the details.

Q As far as you know -- or you're not familiar with the details?

A No, I have no doubt that what you say is so.

Q Are you familiar with the details of zoning of high schools?

A Relatively well informed in that area. I might not know as much about the specific street lines as the Borough Superintendent or the Office of Schools but the level above that I'm more familiar than most officials at the Board of Education.

Q You are a defendant in this law suit, you are aware of that, Mr. Anker?

A Yes.

Q And you had prepared an affidavit at least was over your signature, do you recall that?

A I read it carefully.

Q Did you read it carefully now or did you read it carefully before it was signed?

A Before I signed it. I did not read it carefully now. I glanced at it this morning.

THE COURT: That's June, 1971, was it?

MR. TODEL: That June the 15th, 1971.

Q I direct your attention to Paragraph 21 and ask you to read Paragraph 21 in your affidavit, read it to yourself.

THE COURT: Was it Paragraph 21.

THE WITNESS: Yes.

Q Having read this, had you read the complaint of the plaintiff here at all and the motion for a preliminary injunction?

A I read it I believe at the time, about the time that I signed that. I haven't read that recently.

Q And was there anywhere in the complaint or in the affidavit in support of the motion for preliminary injunction, anywhere in the papers, anything to state, as you stated in your affidavit "It is submitted that the plaintiff by this claim in effect are seeking to achieve racial balance comparable to those Queens schools which have a racial composition more to their liking."

A Not having seen it for several months, I don't recall the details. I do recall however that there was emphasis upon zoning in larger areas of Queens and to that -- it's also part of a Brooklyn zone -- to that extent it was a movement in the direction of Queens.

Q And are you aware of what the policy of the Board of Education is with reference to zoning?

A Yes.

Q And what are the criteria as far as the Board of Education is concerned?

A In the zoning of a high school the immediate area around

the school -- assuming it's a zoned high school, some high schools are not zoned high schools. If it is a zoned high school the immediate area around the school is ordinarily included in the zone of that school but beyond that are factors such as the utilizations problems, the changing, density of population factors. When I say utilization, I mean utilization of the school density population and thirdly the efforts to achieve in feasible fashion whatever integration is possible and that can be done in many many cases.

Q What is meant by feasible integration?

A Well, for example they're not successful in achieving as much integration in a school such as Franklin K. Lane of which I used to be the principal, in East Harlem as we are in achieving integration in a school such as Erasmus, Sheepshead Bay or Cardoza, all of which are in middle class areas and into which substantial numbers of minority youngsters are brought.

Q You say you were principal of Franklin K. Lane?

A I was a teacher, I was a principal at Benjamin Franklin.

Q Were you a teacher at Franklin K. Lane?

A Yes.

Q When were you a teacher there?

A From 1937 to 1948, except for three years in the Armed

Services.

Q And it was in 1937 that the school was built. You came there as one of the first teachers?

A The school had been in existence many years before that, was a new building. It was built about '37, '38. I believe it was opened in September, 1937.

Q And you were teaching there at Franklin K. Lane High School?

A That's where I was appointed as a teacher.

Q And you were teaching at the new school?

A Yes.

Q Do you know from what area of the city students were drawn from to attend Franklin K. Lane High School?

A I don't recall the exact zone, generally the area around the school, I would imagine the Queens section is pretty much what it is today. The Brooklyn section probably is somewhat smaller.

Q What do you mean pretty much the same, joined from the Queens --

A I think the students we got at that time came from Woodhaven section of Queens and they came from the section immediately adjacent in the Brooklyn area going down to and including the edge of Bedford Stuyvestant and Brownsville, those populations were overwhelmingly white at that time.

Q Did they come from Glendale?

A I don't think so. I'm not so certain.

Q Have you ever seen any of the yearbooks of Franklin K. Lane?

A I must have seen some when I was a teacher there but I hadn't seen any in the last 25 years.

Q Did you know that they came from Jamaica, Forest Hills, Glendale and Ridgewood to Franklin K. Lane?

A I'm also certain that Jamaica and Forest Hills were not zoned into Lane at anytime.

Q Was Glendale zoned into Lane?

A I said I don't think so but I'm not certain of that.

Q But the facts that schools may have been zoned in a certain fashion at one time, does the Board ever change zones around?

A Yes, it changes almost every year.

Q And would it be an important part of the criteria for changing a zone is to further racial integration?

A Absolutely.

THE COURT: You mean to further see the borough integration.

THE WITNESS: There are five, six, seven major examples every year.

Q I believe you were very active in one of them

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sic.

when they opened the new Hillcrest High school?

A Yes sir.

Q And there was quite a bit of community discussion with reference to the zoning of children to Hillcrest or to Forest Hills; is that correct?

A There was a great deal of opposition, more than a discussion.

Q One of the witnesses didn't want me to use the word pressure, there was discussion and opposition; is that correct, by the community?

A Yes. I don't know what to say. Some members of the community did not object.

Q I notice on the map that Hillcrest is very close to another high school, very close; is that correct?

A Yes.

Q What other high school is close to Hillcrest?

A Jamaica High School.

Q And I imagine that the Board has considered --

THE COURT: I see (Court looking at map).

Q And you attended many meetings with reference to the zoning of Hillcrest in 1971?

A In the field I believe I attended only one meeting but I attended a number of meetings at headquarters, Most of the meetings in the field were conducted by the superinten-

dent of Queens, Dr. Wildner.

Q Did you speak to reporters with reference to the provision of the Board of Education as to the zoning of Hillcrest?

A I don't remember specific things but I speak to reporters regularly, so I must have.

Q Did you ever tell anyone that the United States Office of Education and I believe the Department of Justice have been sending staff to major cities all over the country including New York City to review our integration program, and ask searching questions about what we are doing to assure integration?

A Yes.

Q Would you have also said --

THE COURT: When, if you can refresh Mr. Anker's recollection was that said.

Q April of 1971?

THE COURT: '71.

Q That was the period of time when there was a great deal of discussion with reference to the zoning of Hillcrest?

A Yes.

Q And would you have also said something to this effect that "It would be especially indefensible to have a

segregated black school in a white area" something to that effect?

A That sounds less familiar.

Q What is a de jure segregated school in your opinion?

A In my opinion is one that we zone deliberately so as to make eligible in attendance only white students or only black students. When we say black in New York City we set a high standard for ourselves because we include at the demand of the community the Puerto Rican Community as blacks, so we use the word black. We ought to be saying black and Puerto Rican. Although Puerto Ricans, 95 percent classify themselves as white.

THE COURT: You don't go by --

THE WITNESS: Almost all of our literature describes schools as black Puerto Rican and therefore the term others -- we use the term white we are using it as a term for others.

THE COURT: As the residual class.

THE WITNESS: That's right.

Q In other words your conception as you describe the de jure segregation where a Government Agency or administrative body does something affirmatively; is that correct, towards zoning a particular area?

A Well, what I understand the dual school systems that

exist in the south --

THE COURT: In other words where you draw zoning lines with specific advertance to racial composition of the school?

THE WITNESS: That's right.

Q And for example we'll go to the Hillcrest situation. You were quoted -- I want to be sure I'm reading it correctly. This is what you did say.

THE COURT: Why don't you show it to him.

MR. TODEL: May we for the record have it marked for identification.

(So marked for identification as Plaintiff Exhibit 9.

THE COURT: What was it?

MR. TODEL: It's a newspaper report dated April 4, 1971, in the Long Island Press.

I think for the record I would want to read the portion that Mr. --

THE COURT: All right, it sometimes helps to see something that you have said, it reinforces your belief that you said it or establishes your conviction that you couldn't have.

MR. TODEL: I'm reading from Plaintiff's Exhibit 9 for identification a quote on the second

page of said exhibit. "We do not have two other high schools in the city that are as close together as Hillcrest and Jamaica High, that creates problems to zoning but Hillcrest is a good area, it's a white area but it has a black area to the south close enough to make integration very feasible." Could you have made such a statement?

THE WITNESS: Yes, I would probably have said we don't have two zoned high schools. I can think now of one illustration, three high schools, two public one parochial that are right next door to each other.

THE COURT: Is that Eastern Parkway Clara Barton --

THE WITNESS: The parochial school and public schools are unzoned girl's schools.

THE COURT: That's special service schools.

THE WITNESS: One is a vocational high School which incidentally we are contemplating changing to what we now call a comprehensive high school. The other is a comprehensive or academic high school.

THE COURT: And both of them are girl's schools and not coed; and MacLaughlin --

THE WITNESS: Bishop MacLaughlin.

THE COURT: That's a girl's school?

THE WITNESS: That's right.

DIRECT EXAMINATION CONTINUING

BY MR. TODEL:

Q Mr. Anker, maybe I did not make myself clear to you, maybe I'm misinterpreting what you did say. I'm making the inference -- I may be correct, and I would like you to correct me if I'm not making the correct inference. You said putting Hillcrest where it was put and built was good because of the fact that it was able to draw black children which was just immediately south to that school?

A I had nothing to do with placing that school where it is but I would say placing a school generally north of Hillside Avenue as was done with the last seven -- six or seven high schools in Queens, so that it could draw both black and white students is part of the objectives of the zoning policy for integration in New York City Schools.

Q Then it is one of the objectives?

A Certainly.

Q To draw children of different races and being able to educate them together; is that correct?

A I think we have a very good record in that respect.

Q Are you familiar with the zone at Grover

Cleveland High School?

A Approximately, but I'm looking at the map now. I see it now.

Q You see it in this area, a fairly large area over here (indicating).

If the Court please, I believe the Court does have two exhibits on the statistics which were introduced.

THE COURT: Is that six and seven.

THE CLERK: Yes, six and seven.

MR. TODEL: This is fine.

THE COURT: You don't want one.

MR. TODEL: No, your Honor.

DIRECT EXAMINATION CONTINUING

BY MR. TODEL:

Q Are you aware, Mr. Anker that in 1967 the Grover Cleveland zone had a school population, ethnic distribution of 61.7 percent other. Were you aware of that?

THE COURT: What is that?

MR. TODEL: 61.7.

THE WITNESS: I also know --

Q Just answer the question, please.

A Yes sir.

Q And are you aware in 1972 at Grover Cleveland High School there was a white or other population, school

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population of 85.8 percent?

A Yes.

Q Are you aware that the Franklin K. Lane High School has an other population distribution, 1972 of 20.5 percent?

A I think that's approximately right. We don't have the official figures yet for the October date but it must be within a couple of percent of that.

Q And do you know, the area in Grover Cleveland zone is predominantly a white area. Do you know that of your own knowledge?

A I would imagine. I don't know all of the areas. I noted the fact that the last witness indicated that one of the areas was changing from white to Puerto Rican.

Q He was referring to the area?

THE COURT: That, there (indicating).

THE WITNESS: I would say that's so and I would say it's probably subject to changes all of Southern Queens and Western Queens is changing.

Q And are you aware of the zone of Lane High School?

THE COURT: Let me ask you something. If I remember the area rightly, the Grover Cleveland zone is an older -- is an old area, as I recall it

of mostly row houses, largely one and two family houses.

THE WITNESS: I think that's right, Sir.

THE COURT: And a good many frame houses, as I recall.

THE WITNESS: I think that's right. The reason I made the point about changes I was going to make before is the fact while it's true Grover Cleveland ethnics have changed in the direction counter in the general trend of New York City, it is also true that Grover Cleveland's population was 99 percent white, so it dropped from 99 to 60 something, went up to 85 and I think it's headed in the other direction again as is true of all Queens High Schools which have dropped at almost as fast a rate in the percentage increase in the percentage of black and Puerto Ricans almost as fast as other boroughs have.

MR. TODEL: May we have this marked for identification.

THE CLERK: Marked for identification as Plaintiff's Exhibit 10.

THE COURT: Let me ask one other question. Perhaps Mr. Baumann you would know it. Are

there any substantial housing projects that you know of in the Grover Cleveland area?

MR. BAUMANN: I don't know of any. I recall that one of the arguments given by the Forest Hills people when they objected to the low cost proposal, there was a proposal to make low cost housing into Glendale. The reason it was shifted to Forest Hills because there had been successful opposition in Glendale, but I know of none.

MR. TODEL: I know yesterday, your Honor had said you thought that there was Lefrak City and in speaking with Mr. Baumann, Lefrak City is not in that area, it's in the JB area, it's over here, your Honor (indicating).

THE WITNESS: Near the Horace Harding Boulevard.

MR. TODEL: Near the Newtown -- in this area here (indicating).

THE COURT: What district is that that you are indicating?

MR. TODEL: John Bowne High School right on the border of Newtown and also the border of Forest Hills, right on the corner there.

THE WITNESS: Near Alexander's Department Store, Long Island City.

DIRECT EXAMINATION CONTINUING

BY MR. TODEL:

Q Would you say, Mr. Anker, as you said a moment ago, I believe that Hillcrest was built more or less where it was built so it could draw a large part of the black population into that school; is that correct?

A More easily would draw black population as far north as Bayside and Flushing High Schools even though there are very few blacks up there. However, it's easier for Hillcrest than the schools up north, the minority students don't travel as far.

Q You would be familiar that Franklin K. Lane is located in an area which is almost completely a white area?

A That's right.

Q Many blocks in each direction?

A Yes, sir.

Q And here you have a situation where the mass of black and Puerto Rican are coming from the western end of the zone and here you have a mass of white or other student population. Has the Board ever thought in your period of time as Deputy Chancellor with the Board in terms of rezoning so that it could further the policy of the Board for racial

integration?

A We rezoned high schools of Queens and Brooklyn.

Q Grover Cleveland and Franklin K. Lane?

A I don't recall any specific plans that were drawn, no.

MR. GOPSTEIN: He asked Mr. Anker whether the Board of Education has ever thought of such a plan. I think the question is very very vague. It's directed to the Board of Education which is a separate defendant in this law suit. I think it's pointed out in the planning of the zoning procedure the Deputy Chancellor, the Chancellor of the Board of Education, all have separate functions and to ask Mr. Anker that question it's unfair, it's not within his realm of knowledge.

THE COURT: Well, I'll take it in the sense that it has come to his notice.

Q As the Court had pointed out when you first began to testify in clarifying your particular position, the Chancellor is a chief executive officer; is that correct?

A Yes.

Q And you are his Deputy?

A That's right.

Q And you are responsible under him with reference to the actual control and operation of the school system of

the City of New York?

A That's correct.

Q And you report to the Board of Education on occasion?

A To the Chancellor.

Q Have you yourself ever appeared before the Board of Education?

A I attend its meetings.

Q And reported to them on various aspects, or were you called upon to report to the Board of Education?

A Never without informing the Chancellor, but I've spoken to members of the Board of Education.

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Q At their regular meetings?

A Yes.

Q Now, during the course, the period of time that you were employed as Deputy Chancellor -- and how long have you been Deputy Chancellor?

A Two and a half years.

Q And before that?

A Acting Superintendent of Schools for five months.

Q What is an Acting Superintendent? Was that the title that the Chancellor had at them time?

A Before the pre-decentralization Chief Officer was Superintendent of Schools and when the last Superintendent of Schools Dr. Donovan retired while the Board was seating a Chancellor one was Dr. Brown and one was myself.

Q You were also the Superintendent in the same position that Scribner is at the present time?

A For that five month period.

Q When did Dr. Donovan retire?

A In 1969.

Q From 1969 when you were Acting Superintendent --

A I'm sorry, Dr. Brown was Acting Superintendent from the Fall of '69 to March of '70. I became Acting Superintendent in March of '70.

Q And prior to your becoming Acting Superintendent

what was position with the Board of Education?

A I was an Assistant Superintendent.

Q Assigned to any function?

A I had three different assignments successively. I was a High School Superintendent for a period, most of the time however I was the Superintendent in charge of the Junior High Schools and then for about a year and a half, before that period, I was an Assistant Superintendent assigned in the Office of the Executive Deputy Superintendent.

Q How long were you an Assistant Superintendent?

A Since 1965.

Q And as Assistant Superintendent you were in charge at one period of time of the high schools?

A In the period that I was a High School Superintendent we were advisory to the district at that time. The districts were running the high schools. I wasn't entirely in charge of the schools.

Q From a period of '65 through to date you are really in the top management of the Board of Education, I would say.

A When I was an Assistant Superintendent I was one of about fifty such Assistant Superintendents.

Q And during the period of time that you were an Assistant Superintendent, a Deputy Superintendent, a Deputy

Chancellor, has there been any discussion, if you know, with reference to the rezoning of Franklin K. Lane and Grover Cleveland in view of the ethnic distribution of these two zones, so that the Board could further its policy of integration.

MR. GOPSTEIN: Your Honor, I object to the question only on the grounds that Mr. Todel asked not only the Board consider such a plan but he added on further add on integration. I think we can divide the two questions.

THE COURT: Whether it was really any discussion that you heard of in that period when you had access to such knowledge of a plan with respect to change of zoning lines as between those two zoning high school districts.

THE WITNESS: There was no report or memorandum which came to my attention in the last two years where I have been directly involved, but previous to that time I was not involved in that. I was identified with the Junior High Schools most of the time.

BY MR. TODEL:

Q During the period of time of your involvement on the level that you are at the present time, was there any

discussion, if you know, with reference to changing the zone of Franklin K. Lane so that it would include part of South Ozone and Lindenwood?

A You mean to extend south into Ozone Park?

Q (Mr. Todel) That's right, and into the Lindenwood section. That's the area over here (indicating) which is part of the John Adams zone.

A I don't recall that specifically but obviously there was discussion as to whether the F in K. Lane zone could be changed.

Q And also being changed more eastward into part of Richmond Hill, any discussion about that?

A I think there was, I don't recall of any specific memorandum on it.

Q But no change was made; is that correct?

A That's right, Richmond Hill High School has dropped.

Q Was there a change or wasn't there a change?

A There was no change.

MR. GOPSTEIN: Richmond Hill or Hohn Adams High School.

Q Mr. Anker, have you ever heard of a word of art or a term used by members of the education profession as to term lost school?

A I don't recall that specifically, no.

Q Do you know what a lost school is, I'll ask you directly?

A No.

Q Have you ever used that term, a lost school?

A I wouldn't say I never used it, but I think you would have to identify in what connection.

Q Say for example of meeting of teachers and officials of the Board of Education on the question of re-zoning which would necessarily involve the introduction of more blacks into a white school or other school. I'm using it in that context?

A I can't conceive of the use of the terms lost school in connection with introducing blacks into a white school. I can conceive that someone, or I may have used the term in connection with difficulties of attempting to change a school that was overwhelmingly black and Puerto Rican back into a different ethnic balance.

Q What do you mean by lost school then?

A I didn't use the term. I could conceive it possibly with that type of zoning, I might have used it, I would say an effort to change Benjamin Franklin High School.

Q Go ahead.

A You asked me the question. I'll illustrate a school that might be used in connection with the term lost. A

school that may be very difficult to reverse the trend that has taken place all over the city, I would cite examples.

Q You mention Benjamin Franklin?

A Windgate.

Q And Boy's High School?

A Yes.

Q Let us stay with Boy's High School, that's located right in the heart of the black area of Brooklyn; is that correct?

A Yes.

Q And Benjamin Franklin is located on 116th Street, East River Drive in Manhattan?

A Yes.

Q East Harlem, Central Harlem, North Harlem, the whole area is black and Puerto Rican. There are certain pockets where there are whites?

A The whole Sutton Place area is all white.

Q Do you students living in Sutton Place?

THE COURT: Off the record.

(Discussion off the record.)

Q (Mr. Todel continuing) I understand and I think in terms of the papers as submitted the tremendous problems in the Metropolitan areas with reference to Boy's High, with reference to Benjamin Franklin, with reference to Windgate,

but from an educational point of view and zoning point of view to find out why do you consider than Franklin K. Lane a lost school zone, if you do?

THE COURT: If you do. What he's really saying, haven't you heard talk one way or the other in circles which you have been in to the effect that Franklin K. Lane is a "lost high school" or a "lost school" meaning if that is the proper term, lost school in the sense that its condition is comparable to such a school as Benjamin Franklin or Boy's High?

THE WITNESS: Franklin K. Lane --

Q Just answer yes or no, and then you can explain.

THE COURT: Subject to the connection.

THE WITNESS: I'm afraid that I can't answer it yes or no.

Q All right, will you give your answer.

THE COURT: That amounts to saying, are there some that think Franklin K. Lane is a lost school in the same sense as the other three.

THE COURT: What kind of question is that? I'm sure there is some lost soul that thinks so.

MR. TODEL: I think it is in terms of it

because I think it really goes to the heart as to whether or not there is something that can be done or whether or not the administration has reached the point where they have just given up, this is the point.

THE COURT: I think maybe you better ask your question.

Q Mr. Anker, is Franklin K. Lane a lost school?

A Not in the sense that I gave the illustration of Windgate or Boy's High School or Benjamin Franklin that are almost 95 percent black and Puerto Rican.

Q The fact that Franklin K. Lane is now about 80 percent if not more black then Puerto Rican you do not consider it a lost school; is that correct?

A No, it has several characteristics that are not true of other schools.

Q Now, as an educator for the past forty years now in the City of New York, are you aware of the educational deprivation that is going on in Franklin K. Lane High School.

THE COURT: He thinks it's rather a leading question comparable to the classic.

MR. GOPSTEIN: The answer is the same.

Q Are you aware of any problems which exist in the education of students in a school which is 80 percent

black, Puerto Rican in the City of New York?

A Yes, but they are not unique to schools that are 80 percent black and Puerto Rican.

Q What are the problems?

A Some of the problems of Franklin K. Lane arrive from the administrative weakness in the operation of the school, others arise from the fact that there are large numbers of young people who live in the ghetto areas who suffer all the disadvantages that all minorities in the ghetto areas suffer. I think a third probable problem, and for that purpose comparison can be made with other schools who have more than 80 percent minority youngsters arises from the fact that a significant number of youngsters come from an area that has been one of the areas of greatest turmoil in the City of New York in the last few years. The Brownsville, Oceanville area, I believe those three are probably the --

THE COURT: Just a moment, please.

MR. TODEL: Yes.

THE COURT: Could you read that to me, the part about the second of the two factors.

(Reporter read back as requested.)

Q Administrative weakness. Do I understand you to mean something wrong with the administration of the school, is that what you mean?

A I think that one of the reasons, the Superindent there and the Chancellor and I have met with the staff, the leadership of the school, is the fact that we recognize additional assistance must be given to the leadership there. That is probably not equally true of some other high schools in the City of New York.

Q I still am not quite clear what you mean the administrative weakness. Are you referring that the school is being administered by personnel in the administration of the school and -- what are you saying? We are not playing games. What are you saying?

A I'm not playing games either. I'm saying that I think at the top of the school -- administration is not as strong as it might be.

Q In other words, what you are saying is possibly, what you are saying the principal is not as strong as he should be, is that what you are saying?

A I was obviously including the principal in the category but I was also including other administrative personnel at the top.

Q And it is your feeling then and as the Assistant Chief Operating Officer of the Board of Education that actually there should be changes in the administration of the school, is that what you are saying?

A I didn't come to that yet, that may be something that might be considered in the future but I think the administration does need more surveillance assistance than other schools with a somewhat similar student body need.

Q What other schools are there with a similar student body?

A We mentioned before Clara Barton High School.

Q Is that a vocational school?

A Yes, the student body is about 95 or 100 percent black and Puerto Rican.

Q We are talking about -- you say you don't classify Franklin K. Lane in that area, you say that's in a separate category since its 80 percent black and Puerto Rican. What other schools?

A Brandeis High School in New York.

Q Where is that located?

A It's on the upper westside, Manhattan. I don't know the exact street, but a school that is also overwhelmingly black and Puerto Rican.

Q But you don't know the exact percentage?

A I may have it. By the way at least as high as Franklin which does not have many of the difficulties that Lane has.

Q During the period of time about six years, seven years there was a change in the school population of

Franklin K. Lane, almost 50 percent or so.

THE COURT: What period?

Q About six years, -- period of about six years.

THE COURT: '65 through '69.

MR. TODEL: Yes.

THE COURT: Just a minute. Well, the 65 to us the subtraction approach it was 47 1/2 percent other and 69 if I am reading across right, 30 1/2 percent other.

MR. TODEL: In 1972, 20.5.

THE COURT: 23.2 is the number.

MR. TODEL: That's on exhibit 7, that's the one that's introduced.

THE COURT: I have one that says the school census for '72 showed 19.4 other in 1972, that's Exhibit 1.

MR. TODEL: Right.

THE COURT: No, it has American Indians and Puerto Ricans separately which would make a three point difference, it would make it 21.3 if you threw them into other.

THE WITNESS: We are required in some data to change the basis. I told you we used to use black, Puerto Rican or others, the Federal Govern-

ment, some of its data because of the national scene speaks of other Spanish surname, categories we did not have.

THE COURT: This chart is now -- one chart is on that basis, I think because it gives other, it gives Puerto Rican and other Spanish surname.

THE WITNESS: That tends to reduce our proportion surnames.

THE COURT: That would give another .9 percent. All right, we are talking about that area.

DIRECT EXAMINATION CONTINUED

BY MR. TODEL:

Q Now, Mr. Anker, there has been testimony in this case that since 1964 the Board of Education has been made aware of the changes in the school population of Franklin K. Lane. Do you know whether or not the Board has ever considered rezoning Franklin K. Lane?

A Well, again you say the Board. If you mean have specific individuals concerned with zoning --

THE COURT: I think we better not use the term Board. It may be better off talking about administration of management or something like that because I take it the Board is pretty much like a

Board of Directors, they make policy in the classic sense of not being concerned with problems, but making policy and leaving others to solve the problems.

Q Do you know, Mr. Anker, whether or not the administration, administrative offices of the Board of Education have ever considered rezoning of Franklin K. Lane zone so that students from Brooklyn could go to Queens and students from Queens could go to Franklin K. Lane?

A Students from Queens are zoned into Franklin K. Lane now.

Q I know with reference to the Woodhaven section.

A In addition to that relief was sought for Lane which was not as overcrowded as many other high schools, its student population was nevertheless reduced further to try and help it by changing the options available to minority group youngsters in Brooklyn by opening some 2,000 feet or more in high schools in Southern Brooklyn, some of which were made available and used by Lane students. Third, if I may finish, a third step that has been taken is that three high schools are being built now. In two of them directly in North Brooklyn, one what is called North Central Brooklyn, all three of which will make some contribution to granting further relief to the crowded high schools in Northern Brooklyn

including Lane.

THE COURT: Where are the three new high schools?

THE WITNESS: One is Northern Central between Madison and Midwood.

THE COURT: North Central?

THE WITNESS: It's called the North Central, it's in the Flatbush section.

THE COURT: North Flatbush.

THE WITNESS: Or West Flatbush.

THE COURT: Between Madison --

THE WITNESS: And Midwood High Schools.

THE COURT: Where is Madison?

THE WITNESS: Near Brooklyn College.

THE COURT: This would put it pretty much in the oldest part, old Flatbush neighborhood.

THE WITNESS: Then the replacement for Boy's High School which is a school on Atlantic Avenue in Bedford Stuyvesant.

THE COURT: Atlantic near where.

THE WITNESS: Near Schenectady.

THE COURT: Is that to replace the whole -- you mean to give up the Boy's High building.

THE WITNESS: It seems that way but no final

determination has been made as to what to do with the old high school building when and if the new high school opens and a third high school is planned to open in Northeast Brooklyn in an area adjoining Bushwick. I don't know exactly where that is now.

THE COURT: Near Bushwick High School --

THE WITNESS: In the Bushwick area.

DIRECT EXAMINATION CONTINUED

BY MR. TODEL:

Q Is that to replace Bushwick High School?

A No, it may replace Eastern District High School which is a very old building.

THE COURT: Do you know what the status of the planning with respect to these three, the one that is most advanced is the one that is called North Central, the steel work is up and that building the contract was signed more than a year ago, it supposed to be finished in September of 1974. The construction has started on the replacement for Boy's High School which incidentally will be very close to and almost in the middle of a large part of the zone that now feed into Lane.

THE COURT: In other words, it would be in the westerly extension.

THE WITNESS: Here's Atlantic Avenue (indicating). It's just about here, this area (indicating) so that it would probably include in its zone some students from this area which is now fed into Lane as well as schools in South Brooklyn. That school was scheduled to be completed in September '74 but was held up because of some kind of resistance to the contract order but it is now in construction.

(continued on next page)

LeG/LH
Take 3

Q And the third school that you mentioned?

A The third one, I'm not sure about the location. It's called the Northeastern High School. It's sometimes called a replacement for Eastern District.

Q But that's not even in the planning stages?

A Oh yes, it's in the planning stages. It's been a community group working on the plans. There are three stages, I don't know whether -- I know it's further behind but it's a school that the Board of Education has committed itself to.

Q In other words, actually when that first school you mentioned they are building somewhere in the heart of Bedford Stuyvesant near Boy's High School the new one to replace?

A That's right.

THE COURT: But what he has said, it's so nearly contiguous to the west end of the present Franklin K. Lane district that it is all but inevitable that it will take a part of that district; is that it?

THE WITNESS: I don't want to predetermine the zone community, but I imagine that's so.

THE COURT: I can imagine.

Q In other words, actually the planning of the

Board of Education in building their high schools, for example the one on Atlantic Avenue --

THE COURT: Schenectady.

Q. And you don't know where the third is that you mentioned.

A I know it's Northeast Brooklyn, I can't tell you more exactly, no.

Q Isn't that East New York? Isn't that East New York?

THE COURT: It's too far North.

THE WITNESS: It's further north.

Q In this area here (indicating).

A Further north. We don't have the Brooklyn map so we can't see it. You can't show the North Central School down there.

THE COURT: Turn that map around. Can you see through the overlays?

THE WITNESS: Here is -- the other school is somewhere around there (indicating). It doesn't show the southern part.

THE COURT: If Madison is unzoned it doesn't show it.

THE WITNESS: That school is somewhere around here (indicating). The school I just

pointed to is on Atlantic Avenue. I've passed it, it's generally around this area (indicating) -- and no, we are going too far east here. In the area around here somewhiere and the third school is Northeast. I did say I knew exactly where but it's in the Northeast section of Brooklyn.

THE COURT: It would be in a northwesterly extension of the Bushwick Avenue area.

THE WITNESS: This is Bushwick High School.

THE COURT: The overlays get rather confusing. Is this a convenient place for a rest for Mr. LeGendre.

(Whereupon a short recess was had.)

(After recess.)

DIRECT EXAMINATION CONTINUING

BY MR. TODEL:

Q You mention the problems about Franklin K. Lane as possibly due to administrative weaknesses; is that correct?

A Yes.

Q Are you aware for example, Mr. Anker, for September and October of 1972 there were admitted to Lane High School approximately 1900 children, 1300 or so in the ninth grade, about 600 or so in the tenth grade to Franklin K. Lane as new students. Are you aware of that?

A I don't know the exact numbers that you are quoting but I think there was substantial numbers in the ninth grade.

Q And are you aware of the fact that Lane High School has a population at the present time of about 47, 4800. Are you aware of that?

A Yes, we are.

Q Are you also aware of the fact that the feeder schools, that those are the schools from which Franklin K. Lane gets its students, the high schools or intermediate schools, are you aware of the fact that from these feeder schools for example, I.S. 271, the percentage of the school who read above grade level in April, 1972 is 6.1 percent.

A I'm sure it's very low.

Q Are you aware of the fact that from Junior High School 263 that feeds into Lane, about 4.7 percent of the students that feed into Lane read above grade level?

A I say I'm sure that your're not inaccurate, not because I know the facts of that school but that is not unusual for schools in some of the ghetto areas of the city.

Q And are you aware -- in other words, you consider then the ghetto areas, the areas where the students are not doing well in school?

A Yes, what I consider the facts of the reading scores support what you are saying.

Q And are you aware for example that over 70 percent of the students who took the Metropolitan Achievement Test in Lane, the ninth grade, 70 percent or more do not even reach the standards of minimum competency established by the state?

A Again, that is -- maybe different in degree but not in major kinds from what one would find in any school that has a large percentage of children from the ghetto areas.

Q In other words, what you are really saying, you are saying the school is being mismanaged: is that what you are saying?

A No, I didn't say that.

Q Compared with similar schools, that's what you are saying.

A I thought I said something of this type that there are somewhat similar schools that have fewer problems, to that extent the administration is not as strong as some of the schools that I mentioned.

Q In other words, the Chief Executive Office area and Deputy Executive Officer really doesn't want to hear about problems and a school is well run when we don't hear about the problems; is that what you are saying?

A That's what you said.

Q I know. I don't say that at all.

You have heard this tale told, I'm quite sure

since you have been in the Board of Education for forty years, that principals want to keep things quiet, not make reports with reference to things that happen within the school whether it's the Police Department or anyone else because it would reflect upon them. You have heard that during the period of time that you have been with the Board of Education?

A I have heard that said and I think it's true for some and a downright falsehood for others.

Q May I just show you Exhibit 10 for identification. Have you possibly seen this particular item that appeared in the New York Times?

A I saw it and I want to reiterate what I said before. You must remember that this is -- I spoke with Mr.Berks,(phonetic) this is data based on the census data on which 95 percent of the Puerto Rican population is listed as white, so that the data breakdown between the whites and blacks is not the same as we use in the schools organization.

Q And this refers to the Queens Census Division; is that correct?

A Yes.

Q But it is quite clear looking at Exhibit 10 for identification, that the county line between Brooklyn and Queens or Kings and Queens, there is a sharp large white population living in Queens; is that correct?

A There is a large but diminishing population living in Queens and a sharply growing black population living in Queens. The percentages are not the same as they are in Brooklyn, of course.

Q Of course during that period of time, let's say five or six years Grover Cleveland which is directly northwest of this area (indicating) of Franklin K. Lane increased their white population from 61.7 percent to 85.8 percent today; is that correct?

A If you isolate those years, yes, that's true.

Q And in your way of thinking as an administrative officer of the Board of Education it is your feeling that the line between Kings and Queens have played no part in the zoning of Lane High School; is that correct?

A I'd say particularly of Lane what you just said is true. It has played no part because Lane is a classic example that includes both Brooklyn and Queens in its zone.

Q At no time from your testimony here today has the Board, has the Administrative Officers considered the policy of the Board, namely to integrate the schools in the City of New York of including Queens and Brooklyn children together?

A If you are suggesting that it was not contemplated throughout the city to ignore geographical factors completely,

that is so. If one were to ignore geographical factors completely then every school in the City of New York should be about 35 percent and about 65 percent black and Puerto Rican, and when the percentage of white dropped two or three percent it would become 32 percent. We would be rezoning every school in the city to that extent, geographical factors have obviously played a part but in the high schools of the City of New York, many devices were used to overcome where it was feasible the facts of life from the map you just showed me that the bulk of the City of New York consists of residential segregated areas. We have attempted to overcome that fact.

Q Is Grover Cleveland zone located in Queens, is that a residentially segregated area?

A It's an overwhelmingly white area.

Q And Mr. Anker, there has been testimony here that the distances and the means of transportation from the western part of the zone of Franklin K. Lane to Grover Cleveland are available. There has also been testimony that the transportation facilities from Grover Cleveland's zone and Richmond Hill and even further zones north are available for students at Franklin K. Lane. Have you ever thought in those terms that the availability of these transportation facilities to further the policy of the Board, further integration?

A I would say there are no absolute -- I won't issue any

veto here either. I would like to point out however that is what is at stake when you and those you represent speak of the very high number of students at Lane and the possible inclusion of other whites is not raising the number but moving substantial numbers of black students out if a very substantial number of black students moved out, giving the facilities today most of them would probably be forced to attend schools that are racially less well balances than is.

Q What about if they were forced to go to Grover Cleveland High School?

A You mean exchange of the black students and white students between Lane and Grover Cleveland?

Q Right.

A I don't know. I haven't examined that in detail but I do want to emphasize the fact while Grover Cleveland is one of the only schools in the City of New York where for a relatively brief five year period the ethnic changes ran counter to the city trend, that that is not true. If you took another period of time --

Q Is that due to the fact that there may be community pressaures from that particular community to maintain a white school?

A No.

Q Did you ever hear of Patricia Gunning?

A Yes.

Q Have you had contact with Patricia Gunning?

A I don't think she would recognize me.

Q And she lives inthe area of Grover Cleveland, that's her section. You have heard of Senator North?

A And Batista who both act for the changes, namely get large numbers of the black students out of Lane.

Q And for a rezoning of Grover Cleveland. Have they asked for that at the conference?

A In the last conference we have had I don't recall their presenting any specific zoning plan.

Q However, I understand you that the Board would not veto a consideration of a change of the zone, say for example of Lane students going to Grover Cleveland or Grover Cleveland students going to Lane?

A I can't think of any possible specific drawing of street lines now that are vetoed by any Board policy, that's what I meant to say.

Q Would the administrators like yourself veto any such drawing of lines? Would the administrative officials like yourself or Dr. Scribner veto any redrawing of the lines of Grover Cleveland or Lane and Richmond Hill and John Adams?

A Not in advance of consideration of any zoning change, no.

Q And you feel that such, from your knowledge

of the situation in Brooklyn and Queens, do you feel that such a change would be warranted in view of the fact that you have a high school to the northwest with 85.6 white school population, do you feel that it's warranted at all?

A I would hesitate to prejudge any such decision. I have every reason to believe that the percentage of white students in all the high schools in New York City will continue to decline and that therefore that must be a factor that we must deal with. We, in attempting to integrate have had the very difficult problem of the fact that the school system of New York City's 100,000 children is treated a single school district and there are surrounding the City of New York school districts that are virtually 100 percent white and others that are 100 percent black, and the people who move there are immuned from any zoning situation that we have, so we are in the position of being asked, in effect, to develop integration plans, use the example black and white while zoning is pulling the white children away regularly and this is true all over the city and this makes the zoning problems difficult.

Q You have answered the question. No, Mr. Anker, then you agree with a statement I believe that Dr. Scribner made before a Congression Hearing that the fact that one of the problems of integration in the metropolitan area is that there is a need to go outside of the metropolitan area into

the suburbs. Do you recall Dr. Scribner made that type of statement before a Congressional Hearing?

A I don't know.

Q But you seem to agree with that thought?

A For both housing and schools.

Q And I'm just trying to see how the Board with eight years of experience knowing what the situation is in an area of Brooklyn did not do anything when there is an area directly north and northwest --

THE COURT: I think you have repeated that.

MR. TODEL: I have no further questions of this witness.

THE COURT: Would you rather we go to lunch now? I take it you mean to recall Dr. Anker? Have you hoped to have Dr. Scribner testify?

MR. GOPSTEIN: He could not be here today, he had not been subpoenaed. The problem is and I think Mr. Anker could testify to that.

THE COURT: But he has got to be here. This is the way we do it. If he's not being subpoenaed, if you want to talk about that I'll send the Marshall out to get him.

MR. GOPSTEIN: I apologize for that.

THE COURT: When will he be here?

MR. GOPSTEIN: I have talked to his counsel and based on his availability he would like to be able to testify Monday morning.

THE COURT: We can't run the whole set of Federal Courts to suit his convenience. He'll have to do better than that, today or tomorrow sometime.

MR. GOPSTEIN: It wll have to be tomorrow.

THE COURT: Do you want an hour and a half? Be back in an hour and a half.

MR. GOPSTEIN: Yes.

THE COURT: All right.

(Whereupon lunch recess was had.)

(After luncheon recess.)

THE COURT: We'll call it cross-examination.

I R V I N G A N K E R, recalled as a witness having already been duly sworn took the witness stand and further testified as follows:

CROSS-EXAMINATION

BY MR. GOPSTEIN:

Q Mr. Anker, we'll go over some of the areas that were covered in this morning's testimony. You were asked a number of questions in regard to the distinction between Brooklyn and Queens and the provision and zoning of high schools and in fact going beyond Brooklyn and Queens, going to other boroughs too. Could you tell us again, and perhaps explain in more detail. When the Board of Education, when the Chancellor considers zoning proposals, are the borders of the boroughs absolute lines beyond which they will not go?

A No, there are definitely not. We have for years zoned many students who lived in Manhattan to schools in the Bronx. There are students in junior high school level who live in the Bronx who are bused to Queens, Lane of course is an example. There are enclaves in Brooklyn that feed into Grover Cleveland and Richmond Hill and of course there are school which deliberately create as unzoned schools which admit students from all over the city.

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Q Could you name them?

A Well, of course the classic examples are Stuyvesant High School, Music and Art, Bronx Science. Virtually all of our Vocational High Schools. We have just converted an Academic High School in Southeast Queens which was having problems, into a comprehensive Academic High School and we admit students to that school from Brooklyn or Queens.

Q And this is special interest schools or comprehensive. I believe you testified that in Brooklyn we had certain new units which perhaps were part of existing schools that would draw typical science types, that would draw students from further away.

MR. TODEL: We haven't had any testimony --

MR. GOPSTEIN: If I'm in error I withdraw it.

Q The administrative position in High School, the Office of High Schools, you do have divisions that's called Office of High Schools that are essentially in Queens, in Brooklyn. You have one unit that covers Brooklyn or is that subdivided?

A For geographic purposes we have two superintendants, one of whom has schools only in Brooklyn, the other has schools in Brooklyn and Staten Island. But I want to emphasize all of these superintendants have other assignments that we call functional assignments that are not geographic at all.

Q So even in a borough like Brooklyn because of its size you would subdivide it further for administrative reasons?

A Yes.

Q But all the High School Principals meet once a month and discuss their joint and common problems?

A Yes.

Q I would like to ask you again about the nature of the Franklin K. Lane zone. You testified you were a teacher in Franklin K. Lane when this building was first opened in 1937. Is it true to the best of your recollection the Lane zone as it appears now, and especially the part of Lane that is in Queens has changed over a long period of time?

A I believe so. I was not certain about the Glendale area that was mentioned, but I think generally there has been no significant changes on the east end of the zone of Lane.

Q And if there had been any changes in the Lane zone in which direction have they been in, what part of the zone have they taken place? In other words, you testified in the Queens part we have had no substantial changes. Have we had changes in the Brooklyn part over at the western end?

A Yes, there were some in the western end. I don't know how far west Lane went at that time.

Q We have not yet introduced actual maps but in the

past few years I think you testified the Board has had programs that have taken some of the students who normally would have gone to Lane to the western area and have sent them to other schools?

A Yes, we have curtailed the zone or we have provided options for others. We did that through rezoning of Boys High School and also through the optional zoning into South Brooklyn that I indicated, and I would anticipate there would be further changes when the other high schools are completed.

Q Now, I think that Mr. Todel cited certain figures that indicated the change in the ethnic distribution of the pupils at Lane over a certain period of years, it was five or seven, I don't remember generally indicating that the other population has gone down and the black and Puerto Rican population has gone up. In light of what you just reiterated again it would seem that this change in the ethnic distribution has taken place without the Lane zone being substantially changed. In other words, this population took place mostly because of residential pattern of changes in the zone.

MR. TODEL: Objection to the form of that question, your Honor.

THE COURT: Theoretically this is a cross, but he's really not a very cross witness with you. You ought not suggest the testimony to him and

perhaps he's too good a witness for that anyway.

Q You are discussing anyway the placement of new high schools in Queens and could you explain to us again what the Board's policy is now generally speaking. Where have new high schools been put and where would the Board like to put future high schools and why?

(continued on next page)

LeG/LH
Take 4

A In Queens in spite of the fact that we have had an increase in proportion of the students in Southern Queens which is largely the black area, and fewer and fewer students in NorthernQueens, in spite of that, the last six or seven -- I have to count them, high schools that have been built in the last ten years were deliberately placed in the area where the student population is not growing, that was done. Mainly North of Hillside Avenue one can mention Lewis, John Bowne, Hillcrest, Cardoza, Martin Van Buren, little older, all of these built North of Hillside Avenue deliberately to make it more feasible to achieve integration, and literally tens of thousands of black students South of Hillside Avenue are zoned into these schools. The natural line of the neighborhood would produce more than one, two or three black students and all of these schools have a range from 20 to 40 percent black students. Hillcrest and Jamaica High Schools are classic examples but even schools as far north as Francis Lewis and Bowne have -- probably 30 percent or more black students, but that was deliberately planned that way. The same thing was true in Brooklyn until recently. If you turn the map upside down, the black community lives largely in the north part, the white largely in the southern part and therefore the last six or seven schools built in Brooklyn were built in the middle of Southern Brooklyn.

Q Could you cite some of those schools?

A Well, F.D.R. in Brooklyn, Wingate at the time it was built was built for integration purposes, Southshore, Canarsie High School. Those are just some of the schools that were built.

Q Has it always been necessary in Queens for example to close a school down if the ethnic distribution got very very much over?

A Yes. We had one school Woodrow Wilson which was a Vocational High School, we call others ethnic distribution, dropped from -- or about 40 percent to about 5 percent and in an effort to try to help in that situation we close the school down and we reorganized it as a Comprehensive High School now called August Martin and we are drawing students all over the borough even though it's in a black area.

THE COURT: What do you call that?

THE WITNESS: August Martin.

THE COURT: And it's oriented to what?

THE WITNESS: Comprehensive High School not Vocational. The school has been in existence for two years now, and this was a deliberate attempt to see whether we could reverse the unfortunate development that had taken place. Another example is the school that you mentioned before, Clara Barton

which is now a school that is probably well over 90 to 95 percent black and Puerto Rican and we are contemplating closing that school down even though it's quite full and convert it to a Comprehensive High School. As a Comprehensive High School with a medical and health orientation hopefully to training young people. All areas of health up to and including nurses and doctors -- we have a community group organized including deans of medical schools and hospitals in the area who are playing a role in plans for that school.

THE COURT: That would mean things like Dieticians, Medical Technicians.

THE WITNESS: Yes. Medical schools and the hospitals in the area and the health centers have indicated an interest, of course in technician level, from x-ray technicians, all types up to and including doctors. Even among the deprived youngsters of many sections of Brooklyn there would be some for which this might be the road upwards towards becoming registered nurses and doctors.

Q Mr. Anker, would you explain as to what you mean when you say Comprehensive High Schools. Explain the term?

A Contrary to popular impression what has been called

Academic High Schools in New York City. I was saying contrary to popular impression the 90 some odd schools that we have that are called Academic High Schools are not academic in the popular sense of the term, that they are college preparatory schools, they include all the students who are eligible to go to these schools and the zoned and curriculum is arranged successfully as we can to handle their needs all the way from those who are planning to go to college and professional schools down to and including those that will be semi-skilled and skilled workers. In other words a comprehensive program there has been some feeling although we provided for business needs as well as academic needs that we did not provide adequately what is sometimes called vocational trade needs and therefore there has been some movement in the direction of putting some trade shops in these schools in addition, but all of these schools are comprehensive in the sense that every student who is in the area or lives in the optional zone may go to the school and we attempt to provide a curriculum for them. In that event all of these 94 schools with the exception of the Vocational High Schools are not in that area with the exception of Bronx High School and Stuyvesant who is designed for the type of --

THE COURT: Properly going on to graduate work after college.

THE WITNESS: Yes. All of these schools other than those three or four, the remaining 90 out of 94 are comprehensive. We haven't been able to put all of the facilities in all of the schools that we see are desirable and even some thought that the students may not just for the trade part go to the trade school for part of their work even in the three or four schools which admission is obtained like Bronx Science and Stuyvesant by examination. Since we were concerned with the fact that there are relatively few minority group youngsters in these schools we have provided a second opportunity route for such youngsters, in this event these youngsters are admitted to these schools even though they don't achieve the necessary examination scores and therefore we have increased the percentage of minority school students at Music and Art.

THE COURT: Something remotely comparable to college only not open.

THE WITNESS: Yes, but we are somewhat selective in the minority group students that are admitted. If there is a cut-off point of 95 percent we might admit those students to much lower schools on the

recommendation of their principals or guidance counsel if they have the potential.

THE COURT: Brooklyn Tech is no longer regarded as one of the special schools?

THE WITNESS: Yes, it is. It has its own problems because of the neighborhood and the black percentage is somewhat higher than it is I suspect in Stuyvesant and Bronx Science but it still is a Brooklyn Technical High School. One big change it's been made coed as a result of a Court suit.

BY MR. GOPSTEIN:

Q I believe you said, Mr. Anker that if all schools were to draw -- high schools were to draw their students from the areas around them we would end up with schools of ethnic distribution far far worse than they are today.

Mr. Anker, let's take some Brooklyn schools, James Madison High School according to the ethnic distribution, the statistics introduced in evidence is 70 percent other. If the students were taken from around the James Madison area, what do you think --

A It would be 99 percent other. Since you mentioned James Madison, just yesterday I met with a group of community leaders who are very unhappy and this is a matter of public debate, very unhappy with our opening of North Central High

School that I mentioned earlier between Madison and Midwood because even though it's in a white area they know that we have a policy of integration and therefore they know that a substantial number of minority youngsters will be coming if we continue our policy, and they are very concerned about the fact that there are diminishing numbers of white students but the numbers coming in will be too large and that all the problems relating to transpotation and damage of housing in the area and crime which I'm quoting will be brought into the neighborhood with the school. It's our policy of integration that causes some schools to be persona non grata in middle class neighborhoods. I have no doubt that that was the fact in the building of a high school in Corona.

Q Have you also --

THE COURT: Was that the one that was the subject of the famous settlement?

THE WITNESS: Yes, the one that Assemblyman Batista was involved in.

Q And the same type of pressures and affairs with regard to the building of North Central High School -- have you also faced that with residents in the Lane zone?

A Yes. When we met with the community leaders a couple of weeks ago, a meeting that was requested by Assemblyman Batista with Scribner, I was present. There were a number of

community leaders there. They were all white and middle class and they were led by Assemblyman Batista and Senator North. They were mostly concerned that we save the neighborhood which they felt was threatened by getting substantial numbers of troublesome black students out of the neighborhood and Senator North, I believe it was him, although others suggested as an alternative if we couldn't do that, at least what we ought to do is to develop a type of fencing so a corridor could be from the elevated station to the school ground which we could prevent from spilling over in the neighborhood.

THE COURT: This is at Franklin K. Lane.

THE WITNESS: In other words they were saying the second best solution would be to, in a sense make sure if they do have to go to Lane that you get them into the building. Someone else commented whether they thought the guard on duty should have cow prods to make sure they don't spill over in the neighborhood. I don't in any way want to demean the problems that are created by people in the community. I'm sure they are very serious but their concern was get the students into the building without their spilling over and that's the kind of community problem we face today in our zoning.

MR. TODEL: I don't mind a response. I thought

the question was to a North Central High School then Mr. Anker just went into this answer.

MR. GOPSTEIN: I think actually during the morning session Mr. Todel brought up the subject of variety of pressures whether from people inside Lane or outside Lane, this specific meeting and conference was inquired into.

MR. TODEL: I have no objection but the question and the answer to the question I don't think was related at all.

THE COURT: As long as the -- a motion to strike for relevancy, no harm is done I suppose. It's difficult in this area on both sides to frame precise questions and get fair answers, that's part of the problem, of course, that a sharply phrased question to which a yes no answer is insisted, the witness must inevitably feel can result only in an approximate and essentially unfair answer I think this sort of issue is illuminating rather than -- otherwise we get beyond the realm of relevancy then of course somebody must move to strike.

Q Mr. Anker, I was asking you before just taking a few high schools Brooklyn and Queens and talking about the

percentage of others and what the percentage might be, were they taken from the immediate area.

THE COURT: I think there is one thing, there is one thing as we have gone along here has increasingly emerged from Mr. Todel's questioning and that is the question is there be a question as to whether all of these ideas have been discussed here have somehow or other not been applied to Lane. There has been a tendency to walk around Lane and to just leave it there and not make it the beneficiary, if that's what it is, the think that Mr. Anker has been discussing in the last few moments here. I think that's why Mr. Todel has kept coming back to his specifi comparison between Lane and Grover Cleveland and the contrast afforded what is being done and the grand planning typified for all purposes by the location and zone line of Hillcrest and by what he has said about adherent to the broad plan of building outside of the areas of ghetto areas but near enough to them so as to create reasonable zones, zones of reasonable geographic simplicity which would bring about mixed school population. Now, all these things can be

demonstrated from the map. I think what Mr. Todel point, the point he's seeking to make, darn it all, breaks down the minute you get to Lane because suppose you had built Lane exactly where it is and the same attitude of mind, I don't know which is the older of the two. I inferred that perhaps Grover Cleveland was originally an older school whichever it was --

MR. GOPSTEIN: Yes.

THE COURT: Suppose you had built Lane right next to -- right in the same thought with the existence of Grover Cleveland and having in mind the contrasting populations of the two schools now, you would not with those zone lines as they exist today be doing what you have done with Jamaica and Hillcrest even though Mr. Todel has been saying, wouldn't that be and isn't it still an area in which you could do for Lane and Grover Cleveland together what has been done and is being done for Jamaica and Hillcrest together. Now, I don't say these are articulated that fully, I wouldn't be surprised if that wasn't in his memorandum at the trial in the trend of his questions and the emphasis that he has given to those four schools. Do you

follow what I'm saying? So I think what you have to do is set a test if it's possible to do so somehow or other Lane is being walked around and perhaps the project for the creation or the opening of the new school at Atlantic and Schenectady has a good deal to do with sitting tight for the moment, roughly the contour that you have for Lane and I suppose unfortunately there isn't any question that Grover Cleveland has a technical matter and the politics and sociology presents a very real problem if you're going to try and invade that district. You're going to have real resistance just as I take it as suspected, you would have real resistance and the resistance of the kind we seem to be running into increasingly to get to the point where we are beginning to wonder whether we are beginning to move against the limits of Government. The Government can only be so governing and beyond that point social forces decline to yield to it, and you have fights in the schools, in the Parochial Schools and fights from the city and all the rest of it. I think the one thing that we haven't at all opened up yet but which should increasingly be a factor and that is the assumed identification

between color and the degree of disadvantage should break down increasingly over the years or else the last hundred years in this city has gone for nothing, and second that somethings like the language of any problem that ought to characterize the educational disadvantage of Puerto Ricans if that classification means anything is self-liquidating or ought to be. In other words, as areas in Bedford Stuyvesant become middle class without becoming white or yellow or brown, but become middle class black neighborhoods, if the visible growth of the black middle class continues now what happens, certainly it will be very difficult to argue that any number of black children can be regarded as educationally disadvantaged when they step in school, they are not. Some of them no doubt have educationally advanced over an indefinitely large number of children of white families which are underprivileged disadvantaged, so I suppose the same thing is happening without reference to color that middle class black people are living down perhaps as fast as middle class white people would have children of tender years, school age, children under high school age

particularly. We are not, I think getting along talking only about a white/black problem exclusively because all our talk about the black/white problem has stemmed in large part from our identification of the black and disadvantaged -- now, anyway hence are not bothered by discursive answer to discursive questions.

BY MR. GOPSTEIN:

Q Mr. Anker, just in line with one other comment which Judge Dooling made, I was wondering whether the Board may be faced with problems when more middle class blacks may move into a school; is that a problem that sometimes arises? I don't have a specific answer in mind, it's not a prepared question. That's why we got out to the extent that we could the census contract, one set of which says in color "By census transaction" and does not show the disparity in income within areas that we keep talking about as if they were uniformed areas.

THE COURT: Now, even for our presentence report purposes here we don't talk about Bedford Stuyvesant. We talk about high or low drug areas within Bedford Stuyvesant or Williamsburg or wherever you want to talk about. In other words, it's all the difference in the world between certain blocks

along Fulton Street and certain blocks along Quincy Street and some of the other streets that you could mention in Bedford Stuyvesant including areas like New York Avenue, around St. Marks Place, placed like that.

MR. TODEL: It would seem to me, your Honor, if we were to proceed with this line of analysis what should be introduced here are income figures rather than -- as both sides have been referring to the question of black and Puerto Rican, I don't know where this leads us.

THE COURT: I don't know. I would be greatly surprised if the people in the school weren't conscious of this. It must be reflected in the classroom experience.

MR. GOPSTEIN: To get back for a second to Franklin K. Lane High School perhaps the question of whether -- what has been done. I would like to ask the preliminary and perhaps it's an obvious question. Wouldn't it be true that the Board has much more flexibility in regard to possible zoning lines when you are constructing a new school rather than when you take one school or schools that have been in an area for a long time.

THE WITNESS: Yes.

THE COURT: Then you know something has got to give.

Q And you have the choice of the original site of the school that is the most basic decision as to where to put it in the first place. Now, in the case of Lane, I just want to have you refer to the map again, This area here (indicating) is there a district for Boys High. Now, this is a Queens map not a Brooklyn map.

THE COURT: We have one.

THE WITNESS: Yes, there is a zone for Boys High School but because it's a single faction school we have to permit options that we don't have to permit in other schools, obviously girls living in that area don't go to school there although the replacement school would be coeducational we're moving in that direction very rapidly. In addition to that there are boys and their parents who elect not to go to a single section school. We have to give them the option to go elsewhere but there is a zone area.

THE COURT: This is the 71-1. Was it zoned in '71?

THE WITNESS: Yes sir, I think so. When we

zoned it we moved into what had been part of Franklin K. Lane area.

THE COURT: Now, that would show in our overlay.

MR. GOPSTEIN: We have in this overlay here (indicating) I don't believe this has been marked for identification.

THE CLERK: Marked for identification as Plaintiff's Exhibit 11.

THE COURT: You don't mind that being a Plaintiff's Exhibit?

MR. TODEL: No.

CROSS-EXAMINATION CONTINUING

BY MR. GOPSTEIN:

Q Mr. Anker, I show you this map which has been referred to previously and I think you can examine it for a second.

A Yes, I see the green, the blue and the red.

Q This map shows the zoning line for which three years?

A '65, '70 and '71. Those were the three years changes were made.

Q If we talk about whether some changes have or have not been made in Lane, the red line indicates the 1971

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zone as an area been taken out of Lane that used to be in there?

A Yes, the west end and the area here (indicating), and this area is now part of Boys or some other --

THE COURT: It kind of looks like it.

THE WITNESS: This is part of the Boys High zone.

THE COURT: Can you see what that -- that must be -- what avenue is that?

THE WITNESS: That's Fulton and this is Atlantic right down here (indicating).

THE COURT: That must be about Atlantic here (indicating).

THE WITNESS: Yes, that's Atlantic and this is Fulton up here (indicating). They are just two blocks apart, Herkimer is the street between them.

THE COURT: So it would look as though that piece -- here's this line so that the old line would have been like this (indicating) and to Schenectady.

(continued on next page)

A In addition to that an area in here (indicating) which might be called the mandated Lane zone was optional and these students were encouraged to go to schools in Southern Brooklyn, it's not removed from the zone because they also have the option to go to Lane.

Q Mr. Selub (phonetic) has already testified about the optional program which he said covered Junior High School, Intermediate Schools 55 and 271 and also to bring you up-to-date the number of students who had taken such options who might have gone to Lane, so that it would appear then, would it not, that the Lane zone has not been lying stagnant, changes have been made both in the area, the western area that you had indicated has been taken out of the Lane zone as well as by giving students at two of the Junior High Schools or Intermediate Schools they feed into Lane, options to go to schools in the south?

A That's true.

MR. GOPSTEIN: Could we mark this in evidence.

THE COURT: Is there an objection to the receipt of Exhibit 11 in evidence?

MR. TODEL: No objection.

THE CLERK: Plaintiff's Exhibit 11 previously marked for identification now marked in evidence.

Q (Mr. Gopstein continuing) Do you know Mr. Anker

whether every high school that has had a high percentage of black and Puerto Ricans has had an option assigning assignment programs or perhaps some may have had and some may have not?

A I think most if not all of those in Northern Brooklyn have had it and for many years most, if not all in Manhattan. I believe there are no options for many such schools in Manhattan, they no longer have a high white percentage of children in the Bronx that they can go to. For many years they did but I think most of the high schools in the Northern area of Brooklyn do have these options. We made available, I believe, about 2,000 to 3,000 seats in various years even to the extent of having these schools 120 and 130 percent of utilization and we always have many more applicants then we have seats available. I don't know the figures for Lane.

Q Questions were raised as to the Grover Cleveland zone and I believe that you testified that the Grover Cleveland zone by virtue of the actual residential composition would be closer to a white zone; is that correct?

A What I know of Maspeth and Glendale, that's true. I'm told that there are some changes taking place now but I'm not familiar with all of the details.

Q Would it be correct if Grover Cleveland is less than 100 percent white or others it is also because of certain

zoning patterns and maybe not necessarily in it but maybe also in the Grover Cleveland land zone?

A Yes, since it's gone down from 99 to 85 and granted in the intermediate period it was even lower because of efforts we have made to try and get minority group youngsters in there.

THE COURT: Doesn't Grover Cleveland have a couple of skip zones in Brooklyn which would attribute to that 15 percent?

THE WITNESS: Yes, I believe it shows in the Brooklyn map here. Here is Richmond Hill and Grover Cleveland (indicating).

THE COURT: Yes.

THE WITNESS: Grover Cleveland used to be larger because of relative overcrowding between Richmond Hill and Grover Cleveland. They have moved it around and I don't know all the details of that change.

Q Now, Mr. Todel asked you various questions, I'll call them hypothetical questions about some of the areas in the southern part of Grover Cleveland - Glendale area, and the questions I believe, the questions were what would happen if we were to take some areas from here (indicating) and add it to Lane. Now, we have -- excuse me -- for a long

introduction -- but I believe I want to set it up, I believe it's been testified that we have 20 to 22 percent others in Lane and I don't know what figures the plaintiffs would prefer to see in Lane but I don't imagine they are talking about 24 or 25 percent which would be a very minimal increase. Let us say we went to a school that is 40 percent others which would mean another 900 white students probably doubling the amount of white students in Lane, if they came from this area (indicating). This area -- is this a high density hi-rise area or is it more single family houses?

A One of the reasons one can tell high density of an area, partly by how big the actual square inches are on the map.

THE COURT: And the school population which I believe is 700 less or thereabouts, I think Grover Cleveland is 3700 or something like that and the other is 44, 45.

THE WITNESS: Grover Cleveland is a smaller plan.

MR. GOPSTEIN: 4,000 from the last figure.

THE COURT: In Grover Cleveland.

MR. GOPSTEIN: I'm showing Mr. Anker the exhibits that are previously marked on school ethnic distribution which involves utilization. It involves

the capacity of the school.

THE WITNESS: I read the capacity of Lane as being 4426 and as I though the capacity of Grover Cleveland is 3,075. Lane is in capacity room space, 15 percent larger than Grover Cleveland and as far as utilization is concerned --

Q Before we get to possible changes, I would like to go into -- I'm just making up figures -- a 40 percent figure for others, certainly I'm certain no one would suggest we want to be 80 percent. Let's say 40 percent others, 900 other students, white students who might come from this area (indicating). Now, you said that this is an area -- first we have the cemeteries here so the southern part is totally nonresidential. We get further north, this is single family homes (indicating). This area. Would you say a population of additionally 900 additional students would have to come from a fairly large area (indicating)?

A Yes, I don't know how large.

Q But we might come up to an area that would be possibly near the school, possibly?

A Where?

Q Near Grover Cleveland. If we were looking for 900 additional students in an area of single family homes and assuming they have the average age that go to school we might

according to Mr. Selub's testimony be going very farther north in cutting off the Grover Cleveland zone and under such a situation it's not possible that Grover Cleveland would be sitting at the southern border of its zone if we were to change the zones that way.

A I think in general terms I would agree with you without looking at specifics I couldn't tell however.

Q We need block by block type studies from your general knowledge of the residents in this area, one such change may lead to a new Grover Cleveland zone where the high school would be sitting very very close to the border and its students coming very far off here, coming down to Grover Cleveland. If we were to take some students from here, is this area east of Lane also an are of mostly single family homes or do we have large apartments?

A It's relatively less densely occupied then the other areas.

Q So would it not be true if we wanted to take also substantial numbers presumably of white students from this area we would also be redrawing the zone, also to what might be the edges of John Adams or Richmond Hill so that these schools would now be sitting at the edge of their districts; is that a possibility?

A Yes, but we have the number problem of the new zone for

Richmond Hill because Richmond Hill has dropped from about almost as dramatically in the last few years as Lane in the ethnic composition. The net energy is not the same while Lane dropped 50 percent, Richmond Hill dropped perhaps 30 percent.

THE COURT: You mean that's all on the part south of Jamaica Avenue or mostly.

THE WITNESS: Yes sir.

Q So the others population of Richmond Hill would go down further in that case?

A Yes.

Q These are just hypothetical questions, I'm not suggesting there is an approach but if we were to take them among other things we might be creating zones for the other schools where the high schools in that zone also lies very very close to the border of its new zone.

Mr. Anker, you were asked this morning about some of the problems which Lane High School has. I think Mr. Todel asked you whether you are aware of the problems of a school which is 80 percent or approximately 80 percent black, Puerto Rican, and I believe you answered yes, you were, but they were certainly not unique in such schools. Could you elaborate on some of the problems that are besetting many schools that cannot be attributed only to Lane or to the

situations it faces?

A Yes, we have had difficulty very similar to that at Lane. A number of other schools where there has been a variety of problems related to students, large proportions of whom come from ghetto areas. Wingate is one that one thinks of immediately, you think of Thomas Jefferson. Recently we heard about the activity of the Tomahawks at the annex and main building. Wingate there has been significant related to drug pushing in the area and some conflict by the way of various groups of blacks, appears to be continental blacks, Island blacks coming from Jamaica and elsewhere. There are similar problems in that nature at Eastern District High School which is more Puerto Rican than it is black. One goes to Manhattan up in the Bronx, Adlai Stevenson and Morris High School there have been somewhat similar types of problems involving the communities, objections to students misconduct in the area as well as trouble within the building. Adlai Stevenson had trouble, fairly young student body which has been changin radically as we open other new schools nearby and thereby redistribute what white population is left in the Bronx amongst them.

Q Is there a widespread drug problem throughout many of the schools?

A I'd like to see this as a community problem around the

school in which the school is obviously a good market place, the pushers assemble around the school.

Q What are the problems at Franklin K. Lane as you understand them and one of the things is the administrative weakness in the operation of the school, and you mention that of course would have to include the principal as the chief administrator of the school. Could you explain to us some of the problems that you see in the way the school has been operated that might be attributed to the administration, the particular administration that run the school?

A I would be frank to say I must concern myself with the individuals involved and the fact that the superintendant hasn't rated anybody unsatisfactory but there has been an expression of a feeling on the part of the superintendant and our observation is that there are weaknesses that have been demonstrated not sufficient to contemplate a transfer of the principals or anything of that sort, but there were instances in the last few years that indicated some inappropriate handling of problems that were handled I think in better fahsion in other schools of a similar nature. One of them as a matter of fact resulted in a case being brought in Federal Court before Judge Weinstein and I became involved in that because Judge Weinstein selected a panel of three at the time, I don't know what the term is, to advise them, give him a report on

them and I was one of those selected. I was then an Assistant Superintendent.

Q What year was this?

A That must have been 1969.

Q Continue please.

A And I appeared as a witness in a panel consisting of Dr. Friend now Assistant in Bedford Stuyvesant. The other two memebers of the panel were black and the charges that were made by the plaintiff at the time, and I remember Kenneth Clark, Dr. Clark was one of those involved at the time the school was under the administration of District 19 Headquarters. The charges were made that the administration of the school was attempting to solve its problems by dumping large numbers of students out of the school on the basis of long term absence, discharging them without making adequate efforts to rehabilitate them and the alternate approach they set up under pressure was not administratively planned, it resulted, as I recall Judge Weinstein ordering an alternate annex that was set up. The committee and I spent several days in that annex to report to the Judge and I was sent by the then Superintendent Dr. Donovan into the school because there was a group of the faculty that felt it was inadequate administering in the school. They also wanted other things done and there was in our minds some indication of the fact that not enough had

been done to deal with these problems. It wasn't adquate supervision of the school itself and I might point out that many in the community to the large degree still make these allegations. I haven't visited the school for several years so I don't know.

MR. GOPSTEIN: It's called Knight vs. The Board of Education and it's a reported case, your Honor.

THE WITNESS: But I do want to say in connection with meetings that have been held Mr. Dubrow, the Superintendent has had many meetings with the principal and with the community and I've alluded already to the meeting that Dr. Scribner and I had with members of the committee, subsequent to that time we had a meeting with staff, that means -- the principal of the school Mr. Selub, Mr. Tadara, the Assistant Principal and one or two members of his staff were present at which a number of past efforts and current efforts were enumerated and quite a number of steps had been taken both in the past and currently to try and help Lane above and beyond those given to schools of comparable student body.

Q The efforst quite aside from the schools of

this ethnic distribution or a school with the problems Lane has been given much attention and much more help; is that correct?

A Yes; school safety has been a major problem in recent years and we are able to allocate an average with two or three school safety officers, school guards, civilian guards. Schools like Lane we average about two or three per high school in the city but virtually not until recently the elementary and very few in the junior high. Lane has had ten, other schools had five and six. It's the one school in the city that we have been able to get more police to stay on duty in the school than any other high school in the city, and we promised to give Lane twenty including Junior Service Officers and that number is three times as many as any high school in the city. Every school in the city for example has a full time student teacher coordinator with what to deal with extra curriculum acitivity. We are providing Lane with two. No school in the city has that. That's above and beyond the more favored treatment. Lane has a college bound program which is very rich. It's not unique. Other schools have it, that type but in addition to that out of tax levy money we have given them extra positions and funds in proportion to the number of retarded readers which were alluded to but above and beyond that we just offered Mr. Selub the equivelent

of $50,000 that he might use for employment of staff and others to provide a planned program there under the leadership of the Assistant Superintendent Mr. Dubrow. He knows more of the details than I do. We set up and urban employment study unit in the school which has been quite successful in at least helping those students involved. Most that I've cited are above and beyond programs that we have in other schools of the same type.

Q So Lane in other words has gotten both additional assistance and also has required more help as far as the administration of the school than other schools of the same type. In the morning I believe you alluded to Brandeis High School as one example. You stated that the administration of Lane needed more assistance than similar schools --

A If it isn't self-serving, I was principal of a school that was over 90 percent black and Puerto Rican,60 percent white and a school that had a history of some difficulty because of racial trouble in the area and the principal of the school now gets none of the kind -- not as wide. Basically these services, and I submit that Franklin K. Lane while I was there and since then has had very little of this type of difficulty. It wouldn't be fair to make this comment without adding what I said this morning, that I do think that there is some problem created by the spill over of the summer

period Ocean Hill-Brownsville difficulties, that is a fact.

Q I would like to get into that area outlining what you think are the problems of Lane, one of the elements you mentioned is that many of its students come from an area, one of the greatest turmoils Ocean Hill-Brownsville area. I'm sure you are concerned about those youngsters. If we were to change the zone of Lane in some of the matters suggested it would seem that some of the students, would it not, who are from Ocean Hill-Brownsville in the western zone were to be cut out from Lane would no longer be going there. I presume the problems of those children would continue to be as great, quite aside from Lane -- we are talking about the individual children. If some of them were going to schools over here in Brooklyn would they be going possibly to schools with higher black and Puerto Rican populations? I don't have the map there.

A If one took the schools in Brooklyn that they might go to, if one moved to the school that were nearest their homes the schools nearest their homes are Bushwick, Boys High School, Jefferson and Wingate, those are the four schools around.

THE COURT: That's Bushwick --

THE WITNESS: Boys High. I'm going from north -- Bushwick (indicating), this is Lane,

Bushwick here (indicating) Boys High School here, Wingate here (indicating) and Thomas Jefferson here (indicating). Everyone of these schools I think, including Bushwick but I know Boys High, Wingate and Jefferson has a smaller percentage of others than Lane has. All of them have had over a period of years even more dramatic changes in their ethnic composition than Lane has had. Wingate was built not more than about 12 or 15 years ago as an ideally located school for integration. It's now about 90 percent minority.

THE COURT: Where is that, Crown Heights?

THE WITNESS: It's Kings County Hospital and Medical School.

THE COURT: Around Clarkson Avenue?

THE WITNESS: Yes, Hawthorne to Rutland and Kingston to Albany, and it's right adjoining Kings County Brooklyn Hospital and Medical Center.

THE COURT: Is Hawthorne and --

THE WITNESS: It's -- it runs from Winthrop to Rutland, Hawthorne is between the two and Kingston to Albany.

Q Is it possible, Mr. Anker if we were to take those students who come from a troubled area and put them in

any of the logical areas, most of them might probably be going to school with a higher black and Puerto Rican composition than the ones they are now attending?

A If we put them in the schools that are adjoining the neighborhood they live in, that's true.

Q Is it possible that those students going to Lane might be given a relatively more integrated education than they might have then going to a school of between two percent others?

A In comparison with the other schools that's true.

Q Now, in talking about some of the special assistance which Lane High School has received which you mentioned before above and beyond what other schools in the same situation has received, has Lane also been helped in its utilization factor.

A I show you here (indicating). Yes, I believe the utilization was significantly reduced. I don't know the exact numbers.

(continued on next page)

Q I show you here the ethnic distribution in evidence.

A The enrollment apparently reached its peak in 1968. In 1967 it was 5100 plus. In 1968 just about the time of the difficulty I refer to it was 53-74, almost 5400. It's been reduced to 4600 last year and this report which I don't have officially yet, but I have no reason to believe is inaccurate, 4900.

THE COURT: We had a number at an earlier stage of 52-78 for '72; is that wrong?

MR. GOPSTEIN: Those figures might have been taken at different times. I don't know when those figures were taken.

THE WITNESS: The official date for purposes of state aid and city zoning is October 31st, that's when the schools take it and they give us preliminary figures earlier than that and other figures later on but normally central zoning would give that figure and the school has several weeks to submit that data that has just been assembled, and I think I have the data to the figures in my office but 4900 is close to accurate.

Q And what percent utilization?

A 111 percent which reduced it from a peak of 125 percent

utilization which is significantly smaller than most high schools in New York City.

Q This was a less crowded school population with one of the methods that is used to help Lane overcome its problem.

A That is true.

Q Now, this morning, Mr. Anker, you made some general comments about how you saw the problems of integrating schools in New York and I would like you to, maybe restate or elaborate on it from you information, from your knowledge what has happened to the white population, the white middle class population in New York City.

A There has been a dramatic change. One might also say catastrophic, for example the percentage was 70 percent, others 30 percent black and Puerto Rican. Today it's about 75 percent black and Puerto Rican, about 25 percent others. Queens which was about 94, 95 percent others, has dropped this year to somewhere between 65 and 70 except we don't have the official data. It was 77 percent last year, it's dropping at a sharp rate. Last year for the first time in the high school population amongst the academic high schools where there is a large portion of whites than there is in the vocational high schools the proportion of whites fell last year for the first time below 50 percent in the academic high schools of

New York. If takes the figure generally it's dropped to about 35 percent city wide. In other terms we have lost in a decade about 200,000 middle class youngsters which is more than 50 percent of what we have today, well above that, it's gone from -- I don't have the exact numbers, it's dropped -- it was replaced by 250,000 low income. I'm using the term your Honor did before, most of low income being black and Puerto Rican, that's why I feel while the community has got a right to expect of us that we do all that is reasonable and have a right to police it that we do all that is reasonable and feasible to integrate our schools. If the community is as sincere about wanting integrated education it has got to do something to salvage cities like New York which inevitably are headed towards severely racially imbalanced schools. New York City is years behind than cities like Detroit and Philadelphia where the percentage of blacks for example in the public schools if much higher than it is in New York, even if we count black and Puerto Rican together. So I want to reiterate if the community, if the laws of our land and our policy makers are sincere they have got to do more than discuss now do we deal with each school. We face the tragedy of any number of schools that were planned seven, eight years ago in ideally located areas to make them integrated that are opening today, 60, 70 percent black and Puerto Rican. The

latest one was John F. Kennedy, a brochure was written when it was planned by a staff member of the Board, Dr. Landers was the great advocate on integration, how that was an ideally integrated school and we just opened it 80 percent black and Puerto Rican including the Riverdale area, that's the tragic situation. We have to accept segregated schools or we have to do something about rezoning Metropolitan areas both as to housing and as to schooling.

Q In other words, the situation is largely a result of residential housing pattern?

A That magnified by the fact in those areas where the middle class finds the student break-out unacceptable there is an even greater motivation for those people to remain outside or go outside the public school system. A dramatic example is the fact that not only do parochial schools decline in areas that are going black, put it that way, but they decline in the middle class suburban areas because there isn't as much motivation apparently even among Catholics and certain Jews to send their children to parochial schools where the other students are also middle class. While in the areas where there is a still a substantial student body in the cities there is we notice that the parochial schools and private schools continue. We have that phenomena in the area where I live in Jamaica where there are six or seven non-public

schools and I might divide the middle class people into those two groups, those, whatever the reason -- I'm not implying that there is anything immoral about their decisions, those who elect to send their children to overwhelmingly white schools and those accept integrated public education. I'm not implying that the others are making those selections solely to avoid integration, it's no doubt when you go out to Roslyn and Great Neck you don't these non-public schools proliferating that way.

THE COURT: You are suggesting defenses and if there is nothing to defend against, they don't exist.

THE WITNESS: To some extent. I don't want to disparage the election that some people always make to send their children to private schools because the curriculum reasons or to parochial schools for religious reasons obviously.

Q It's obvious, Mr. Anker, in some of these areas in Queens that we have been talking about there may now already be a very large parochial school population, there might be more.

A I spoke of non-public schools that I know of in the area where I live. The majority are not religious, they are just private schools which in my judgment don't provide a

superior education but nevertheless it happens, but that's not true of the entire community. I have lived in the area, all my three youngsters have gone to Jamaica High School, my boy is in Jamaica High School and his class has more than 50 percent black students. It's no doubt that we face the danger if the trend continues, we will not be able to achieve integration by working within the urban areas.

Q You mention the changes in housing, in the area of Lane, was this a predominantly white or black area?

A It was white. We got youngsters from the edge of the Thomas Jefferson area in East New York. Years ago when I was a teacher there and there were white students they were poorer than some of the others. Lane zone was always a lower middle class area, but they were white and there had been a dramatic change in that area. It happened much more dramatically to Thomas Jefferson when 95 percent white, less than 5 percent today because of the change. The dramatic change that took place in Brownsville and East New York, that even had a very dramatic impact. I might add in passing that one of the reasons we had to develop a zone for Boys High School, for years we didn't have to have a zone, it was a magnet school.

THE COURT: That was my school.

THE WITNESS: You were also threatened. If you didn't behave you were to go to another

school. In the midst of one of the crowded areas we closed Girls High School, we wanted to give the girls an opportunity to go to an integrated school. Canarsie High School we have 40 percent black students in that area that we have brought in largely from the north. South Shore High School, Tilden, South Shore and Canarsie are all below 60 percent white in areas that are almost totally white areas by bringing in large numbers of minority group youngsters. If you take Wingate and Erasmus, Wingate has already changed dramatically. As I indicated Erasmus we have reduced the student body from 7,000 to something around 4,000 in an effort to try and keep it integrated, and I'll be frank to say that we are perhaps losing the battle. We introduced a special academy at Erasmus, did the same thing at Tilden, it's dropped below 60 percent white.

sic

Q And the programs that you referred to, open admission in other schools that send many students from the north to the south high schools, is it correct, to many of the south high schools, the receiving schools, this has damaged their capacity to the minimum. Many of them are working at very high utilization percentages.

A If my memory serves me correctly schools like Madison, Sheepshead Bay, South Shore.

Q I show you the ethnic distribution which includes the utilization figures, perhaps you can mention some of the schools you are talking about as a result of these programs?

A A school like Lafayette is at 134 percent of utilization; Midwood is 142 percent with 30 percent non-white brought in from further north. New Utrecht is 146 percent: Prospect Heights, the school I mentioned before is only 110 percent; Tilden we have allowed to drop down to 85 percent utilization, it used to be 134 percent. We have allowed the student bodies there to drop from 4900 to 2800 in an effort to try to prevent it from becoming a defacto imbalanced school. This is a dramatic example of what we have tried to do to try and keep the school integrated even though we need that space definitely.

Q Some of these high schools in the south of Brooklyn which has the figure of 146 percent utilization, would it not be logical for some students attending Lane, black and Puerto Rican students are now attending those schools and providing a greater measure of integration?

A I mentioned Erasmus. We have allowed the student body in Erasmus to drop from 6800 in 1961. I said about 7,000. We have allowed it to drop in an area even more crowded today, north of it, down to 4900, in order to try to prevent it from

happening but at the same time the ethnic --

THE COURT: What year is that?

THE WITNESS: 1961, 90 percent others, student body of 6800.

THE COURT: In 1972?

THE WITNESS: In 1972 we allowed it to drop down to -- which is a drop of about 30 percent, the enrollment, and in spite of that the percentage of others have dropped, has dropped from 91 percent to 36 percent.

THE COURT: Can you tell whether the growth has been in Puerto Ricans mostly or --

THE WITNESS: Primarily black. The number of Puerto Ricans there has been about 333. The last few years the number of blacks has grown from 590; ten years ago to 2800, 28 in this data here but it was initiated in an effort to integrate, try to provide integrated education for the black students in North Brooklyn.

Q Now, if we look at the Lane zone again you have testified to changes which the Board of Education has made to alleviate the problem in Lane, both in regard to utilization and the problem of ethnic distribution. When was the zone from the western part that was cut out which is now in Brooklyn

that we saw on the map before and to the open admission program. If your knowledge of this area here (indicating) the area that was taken out, would you say that had the Board of Education not taken the move the ethnic distribution in Lane today would have a far higher group in Lane today?

A Yes, plus higher, over-higher, over-utilization.

Q Even with taking these areas out because of residential patterns, a very high percentage of black and Puerto Rican, but a pattern which would be worse, it would have been black and Puerto Ricans had the Board of Education not taken these steps?

A That's correct.

Q You mentioned before also, that a large number of people in the area where you live actually who are sending their children to private schools, not necessarily to parochial schools. It might be possible -- I'm not 100 percent sure whether you have already stated that in some of these other areas in Queens we have a large percentage of people who now or in the future might send their children to school --

MR. TODEL: Your Honor, the form of the question is so wide, it necessarily requires a yes answer on this, it's just a surmise and I object to the form of that question.

THE COURT: It seems you went a little far.

MR. GOPSTEIN: I have no further questions.

MR. TODEL: Just for bookkeeping purposes. Yesterday when Mr. Thorne turned over what is now Plaintiff's Exhibit 6 and 7 he did mention that it wasn't complete and I know that as Mr. Gopstein was reading figures to Mr. Anker, I know that the exhibits do not have those pages and I would like to have the complete copy marked as an exhibit.

MR. GOPSTEIN: Some pages were missing because they were zeroxed.

THE COURT: Is this a complete set now? Why don't we remark them six and seven?

MR. TODEL: The Queens would be six and the Brooklyn would be seven.

THE CLERK: So marked.

REDIRECT EXAMINATION

BY MR. TODEL:

Q Mr. Anker, as you were testifying this afternoon, and I listened to you as the responses and almost narrative responses explain your position, I got the feeling that possibly you must have used the term at one time or another of a lost school and you were talking about a lost city just now. Is that what you were talking about?

A I think I said if one means lost in the sense that a

society is lost when it has one kind of people, it's not lost to another kind of people. I don't mean that. I never would use the term that way.

THE COURT: Lost with the hope of integration.

THE WITNESS: Yes. If one means lost in that sense of the term, in the term of probabilities -- if one had to bet on what the chances are that Harlem would be an integrated community three to five years from now, in that sense the possibilities of being an integrated community three to five years is much less than many other parts of the city, than in the suburbs.

Q I'm sure in 1964, 1965, '66, '67, the administration of the Board of Education was aware of what was happening at Franklin K. Lane. I'm sure they were aware of what was happening with the statistics up until the present day of the increase in black and Puerto Rican school population at Lane, and a decrease in the white population. Would you say that they were aware of this particular situation?

A I wasn't involved in it personally. If they read the statistics they must have read the statistics for that as well as other schools which was equally true.

Q From your testimony the one change they did make in the zone at that particular time was that they removed

a part of the western zone and put it into Boys High?

A It was two changes that we spoke about that were shown on that map, that's why there three years cited there.

Q The changes were part of the Lane District went into Boys High District?

A That's one of the two changes.

Q What was the other change?

A To include part of the Lane zone in the area in which students would be able to fill some of those two to three thousand seats made available.

Q The number of seats you would no be aware, it was about eighteen, nineteen hundred seats available, made available on the optional program?

A More than that.

Q And for the first year, approximately 450 students went from the Lane zone option out to other schools?

A Yes.

Q Do you know how many students opted out from the Lane zone?

A No, I don't know the number that came from each school.

Q The figure is at least produced by Mr. Thorne as 156?

A Of course that's cumulative.

Q When you say cumulative, what do you mean?

A You mean for each year -- it would be 600.

Q 156 cumulative for the number of years.

THE COURT: Times four years.

THE WITNESS: 156 is one year. To take that minimal number, if you had 150 each year, if you look at the total student body of a school that number is approximately 600 students.

Q And do you know when the figures are put together with number of students that opted out -- forexample, the figures that were presented by Mr. Thorne are these figures -- do you know when these figures -- whether these are the figures that are assembled each year?

A Well, the figures must be available in the Spring when the students make the selection. When he assembles them by these schools.

Q In other words that would be in the Spring of 1969 or 1970, and that would be for students who would be going to these schools in the September term?

A Yes. My point is that there are a thousand students -- if you add these two together approximately a thousand who in a four year period would be in Lane High School now if they had not gone to these schools.

THE COURT: His point is a different one, he'll get to it in a moment.

Q Do you know how many of these students went to these various schools?

A How many of those who elected to go there?

THE COURT: Exercise the option, how many actually follow through with attendance.

THE WITNESS: No, I don't know the number and there are many students who changed their mind before the school years opens. There are many others who go and remain for several weeks or months, I have no knowledge.

Q And there are some schools that may not receive the application or would not retain the student even though they opt out to a particular school.

A This is mandated. The receiving school has no option.

MR. TODEL: I see.

MR. GOPSTEIN: I believe Mr. Thorne testified to all this yesterday.

THE COURT: I think he was hoping for a different answer.

Q The option program of the Board of Education for Lane District, zone district, did it include any high schools in Queens where students from the Lane District could opt to Queens?

A Except for that zone, to the --

THE COURT: No, the option school, Madison is one, it's on that exhibit.

MR. TODEL: Yes.

THE WITNESS: The option schools in Queens are the ones that are made available for the black and Puerto Rican children in Southern Queens primarily, the technique is a little different there.

Q However, the students from the Lane District, the Lane zone district, if they lived in that district could not go to schools in Queens County?

A If you permit me to say --

Q Yes or no, that you can answer yes or no.

THE COURT: Could I have the question read please.

(Whereupon question read as requested.)

A The schools on the list included no Queens schools to the best of my knowledge.

Q Mr. Anker, you were testifying about a case which came up in this courthouse about three years ago involving Franklin K. Lane High School, and you stated that you were on some sort of a panel; is that correct?

A That's right.

Q And that involved the fact that approximately

six hundred some odd students were suspended from the school; is that correct?

A I don't know it was suspended, I think they were discharged.

Q Discharged from school.

THE COURT: In an effort to transfer to a six hundred school in bulk or something like that?

MR. TODEL: No.

THE WITNESS: Some of them were offered this alternative in the annex, as I recall, but the point was having been absent from school a long period of time, the school then discharged them.

Q And is that what you were referring to at that time?

A Yes, that's the part I remember.

Q And you felt that that was the wrong procedure on the part of Mr. Selub and the administration of that school?

A It was illegally --

Q Had he discussed this at all with members of the Board of Education, the administration, what was being done?

A Did I?

Q And did he discuss it, if you know?

A He never discussed it with me.

Q Do you know whether or not he discussed with the administration of the Board of Education with reference to the discharging of the students?

A I don't know.

Q So you don't know then the facts with reference to this particular case?

A I think I know some of the facts. I don't know the answer to the question you just asked me.

Q You feel that Mr. Selub was responsible for that action at that time?

A At least partially responsible.

Q When you say partially responsible, who else would be responsible?

A It might be some of the administrators on his staff who may have initiated it.

Q It's only on the high school itself.

A I didn't finish my answer. If you are implying that someone else authorized him to do it. If there are such people they are partially responsible. I know of no one.

Q You don't know if that was discussed with anybody outside of the administration of Franklin K. Lane High School itself?

A No.

Q Do you have any information that it was discussed

or was not discussed?

A I have no information about that.

Q So you don't know if it had been discussed with someone within the Board before this action was taken?

A That's right.

Q And Mr. Selub was kept there as a principal in the school since 1969?

A That is correct.

(continued on next page)

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Q And you stated that you were giving a great deal of services to the school other than other schools are receiving?

A I indicated that some examples of the extra services that had been given -- I don't want to characterize whether it's enough or too much or too little.

Q I have a feeling from your testimony that you felt that this was really out of an extraordinary effort on the part of the Board of Education?

A Yes, it is.

Q Do you think it's an effort which was justified by the Board of Education by giving this extra service for Franklin K. Lane?

A Yes. The present Chancellor for example has asked that we give this service and monitored every week to find out that things were being done and what's being done to help, because he feels it's justified.

Q You feel it is justified; is that correct?

A Yes.

Q In other words, when this service is being given to the school, this is given to the school not of criticism of Belub and his staff but that the school needs this kind of service?

A I'm saying the school needs the service even though

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the student body is not uniquely different from other schools because it manifests these problems, it's not done to criticize them, it's done to help them.

Q In other words, what you are saying in reality is -- maybe I'm completely misunderstanding you, but I got the feeling from your testimony that the giving of the extra services to the school, Franklin K. Lane, is because it is being poorly administered. This is the impression I got from your testimony; is that what you are saying?

THE COURT: I think we can sum up. He said that the extra effort is being expended and monitored on Franklin K. Lane because it's justified by the Board, actually need of it, even though its problems are not different from those of other schools which do not need and do not get such extra services, and he invites you to draw the conclusion which he suggested that he was drawing that there were administrative weaknesses that explained that failure of administration to deal with what should have been identical problems with identical extra help; is that it?

THE WITNESS: Yes sir.

Q You say the school of Franklin K. Lane, that the conditions that exist there are identical with any other

school in the City of New York?

A Not identical, I think they are comparable. I indicated one difference when I originally testified. No two schools are identical but they are not unique as compared with certainly nine or ten schools that I think I can name.

Q Did you ever say that it was indefensible to put a black school in a white neighborhood?

A I think if one deliberately planned to put a black school in a white neighborhood, I think it would be indefensible.

Q Where is Franklin K. Lane located, in a white or black area?

A Immediate area is white.

Q Is that another factor which may enter into the picture with reference to the administration of the school, would this be an added factor?

A Yes.

Q And as educator, Mr. Anker, is it your belief on your knowledge of the Board of Education in the administration of its educational programs that the students at Franklin K. Lane High School are receiving an education comparable to other high schools in the City of New York?

A As I said I haven't visited the school in recent years firsthand, from what both the principals tell us, the community tells us and the students tell us, there are

factors that are interfering with their education or conditions that are not replicated in schools that I mentioned, Brandeis, I mentioned others of similar nature where the ethnic composition is larger in proportion of black and Puerto Rican ghetto children.

Q Are there educational services necessary, which are necessary for the services of servicing of Lane? Are they sufficient? Are there sufficient educational services to service student population in Lane?

A Inasmuch as the Board of Education and the Chancellor and when I was acting superintendent submitted budgets to the city which requested more services, obviously we believed what we got were not adequate and we were not able to distribute to any of the schools as many services as we thought we should have and Lane would be included among them.

Q For example, are the educational services sufficient for the tremendous number of students of an entry class who are at least 70 percent of them below competent reading level, are they sufficient services for these children at Lane at the present time?

A I think I can only answer as I answered before, we got two severe cuts in the budget.

Q I understand that. What I'm asking you, are there sufficient services today for the type of students who

are going to Lane High School.

A I say it necessarily follows from the fact that we asked for a larger budget that we think they are not enough services.

Q In other words, you do not believe as an educator that there are sufficient services necessary to teach the children who attend Lane as compared with services which are provided by children attending Forest Hills High School or Hillcrest or Jamaica High School?

A I don't at all agree with that.

THE COURT: I think what he said, he doesn't think that they are getting enough for any of the schools, the budgetary demand has not been met so everybody has been cut back, what they regard as the educational priorities required.

Q Do you feel, Mr. Anker, as an educator that the students who attend Lane need more educational facilities or services than students that attend Hillcrest or Bayside?

A Yes.

Q Are they getting more services?

A Much more.

Q Are they getting sufficient services for their education at Lane?

A They probably are not and neither are the students at

Forest Hills and Bayside.

Q You were asked by Mr. Gopstein with reference if the students who attend Lane or in the Lane zone district were to go to Grover Cleveland that it would really take up a great part of the Grover Cleveland zone; is that correct?

A I thought the question he was asking me if we would try to take some of the Grover Cleveland students and bring them into Lane, how far north would we have to go, and I thought looking at the map it would be quite clear you would have to go quite a distance possibly, very close to the actual school building to get a substantial number.

Q And what for example if you were to go into the John Adams area, Lindenwood, South Ozone Park?

A It seems obvious by looking at the map that you would have to do the same thing at John Adams and at the same time reduce significantly the ethnic balance that exists now at John Adams.

Q And with reference to Richmond Hill?

A Even more so because the percentage of minority group youngsters is significantly higher.

Q And with reference to Forest Hills?

A We already looking at the map have eaten into the bulk of the zone of Forest Hills in the southeast in order to get the right students for Hillcrest.

Q Do you know what the white population of Forest Hills was in 1972?

A I would think the minority population would be about 20 percent or more, about that?

Q Well, the other population in Forest Hills for 1972 is 84.5 percent, but you don't know even though Mr. Gopstein asked you these questions with reference to the areas in Queens which possibly take students from the Franklin K. Lane zone and students from the Queens section coming into Franklin K. Lane, you don't know of any overall study that has been made as to the feasibility of doing that?

A No, but I think it stands to reason that if minority group students in Southern Queens are having difficulty as they are traveling to schools like John Bowne, Francis Lewis, so forth, that if students came from all over on the western end and Bedford Stuyvesant have an infinitely different time getting to the schools up there.

Q Would they have infinitely a hard time getting to Grover Cleveland?

A It would obviously be easier. I don't know. The last witness testified what the transportation problems are. I know the elevated line which is the direct communication for them does not reach Grover Cleveland. There may be alternate methods of transportation which might be somewhat feasible,

I don't know.

Q In other words, you are looking at this in terms as an administrator without having too much detailed knowledge about the zoning problems at all, without looking at a map and saying this could not be done?

A That's not the way we do zoning. I don't make these determinations by looking at a map. We have a staff that does that.

Q Has your staff ever made a feasibility study in the past four, five, six years as to the feasilibity of students in the Franklin K. Lane zone, the feasibility of their attending Queens High School zone district?

A You are talking, of course, only of the black students in Franklin K. Lane, obviously not the white?

Q That's right.

A They have made studies of what black students could go to schools in Queens, that's the very reason they have some students going to schools in Queens and they are having difficulties.

Q What difficulties?

A These students find the distance and the travel difficult. There are no subways in much of Queens and the bus lines are bus lines that go north, south in most cases and they have had trouble even with the students going to

Richmond Hill and Grover Cleveland from those inclaves. Those students from Franklin K. Lane are far -- as you stated -- far to the west of Lane itself.

Q But you are probably not knowledgeable with the transportation facilities that exist in the Lane zone.

A I am reasonable familiar with it, I travelled to Lane myself for many years. I know the elevated line. I don't know the bus lines as well that go through the Grover Cleveland area.

Q You know the subway, the Jamaica line?

A That's why it was always easier to get the students from the East New York area, and now the Bedford Stuyvesant are to Lane because there is a direct subway line that made it reasonably successful. One of the obvious objectives in moving black students is the very point you made earlier, there is no point in offering options if the students afterwards will elect not to continue, or if they come so late to school that they become academically disadvantaged, particularly if a school that is going to operate 11 and 12 periods a day.

Q Are there some schools that operate 11, 12 periods a day?

A My own son goes to Jamaica High School and has to be in school ten minutes to eight; Jamaica High School is now one of the utilized schools, there are schools that start

seven thirty, a quarter to eight and run until five in the evening.

Q Would you as an educator recommend that for Franklin K. Lane High School?

A Of course not, would avoid it.

Q You have used the term utilization a number of times, what does that mean?

A It's a percentage obtained in which the enumerator is the registrar of the school and the denominator is the capacity of the school.

Q Now, sometime --

THE COURT: What does capacity mean, number of desks?

THE WITNESS: The answer is yes. If one takes it in a sophisticated form there is a standard method of computing capacities of schools. One type of form it's a public brochure which is adopted in cooperation with the City Planning Commission and the Budget Authorities of the city who are concerned about the fact that we use our buildings to full capacity otherwise they have capital budget problems and we sit down with them and we don't do it by numbers of desks. If the allocation we give for example provides for an

average class size of thirty, we will count thirty for each classroom, even if there are 40 desks in the classroom. Certain spaces are not counted, obviously the cafeteria and auditorium, certain kinds of shops, and this is a unform formula. It also provides a more different type of measurement of each classroom in a disadvantaged area then advantaged because we have smaller classes in those schools. We give them a better allocation. They must therefore have better classes for the same number of students and this is studied and examined by the community very carefully. They are very jealous of each other, fair distribution.

THE COURT: What happens if you have in effect double sessions in a school, does that come up as twofold, the capacity?

THE WITNESS: Of course, most high schools don't have what is called end to end sessions, most of them have what they call overlapping sessions, some people call that overlapping, they have more than an eight period day, it enables the schools to operate more successfully but it doesn't change the number that one would read on

the docket. One will notice for example at Lane the building didn't change. The capacity numbers are lower now than they were seven, eight years ago. Since we give a better allocation we therefore say the capacity for each room is fewer students than it was at one time, physically the room hasn't changed.

Q Well, the capacity of Lane for example in 1967 was 4315 students and in 1972, it's now 4426 students?

A There was a time when it was higher.

Q Capacity?

A Yes.

Q One time in 1961 was 4535 students. Now, in other words when a school is over-utilized --

THE COURT: It was one time when it was over 5,000. Wasn't there a time when it was considered to be over 5,000?

MR. TODEL: That's the enrollment. The enrollment was over 5,000 in '67.

THE COURT: Capacity was never. According to this it was never above 4315.

THE WITNESS: 45 at one time but I may be wrong.

THE COURT: It could have been in the very

early --

Q And actually in 1961 in the exhibit it shows 4535 was the capacity in 1961.

THE COURT: I don't have that for the year I was just speaking of, '64 and later.

Q When a school is over utilized, say for example in many of thewhite areas of the city in Queens and even in Brooklyn, many of the schools are overly utilized, and that would reduce the number of children who are able to come from a black area to go to that school ; is that correct?

A One could turn the question around and say that in order to increase the number of minority group youngsters to come to the school we program the utilization to go well over 100 percent. If we were to hold to a hundred percent then all of these school in Northern Queens and all of the schools in Southern Brooklyn would not be able to admit minority group youngsters.

THE COURT: I think your original plan was to call Mr. Anker for ten minutes as you outlined yesterday.

MR. TODEL: I'll end at this time, your Honor.

THE COURT: 10:30 tomorrow. I think we have a couple of sentences on at 10:00 o'clock.

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MR. GOPSTEIN: Can I ask your Honor's decision on the request I made yesterday in regard to when I would begin my direct case?

THE COURT: What's our situation. You wanted not to do anything until Monday. As I understand we will see Mr. Scribner tomorrow, that will take up a good part of the morning.

(Whereupon the Court recessed for the day.)

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

CHARLES DE FELICE, :

Plaintiff, :

-against- :

71 C 502

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

December 15, 1972
10:00 a.m.

B e f o r e :

HONORABLE JOHN F. DOOLING, JR., U.S.D.J.

HENRI LeGENDRE
Court Reporter

Appearances:

MORTIMER TODEL, ESQ.
Attorney for Plaintiff

NORMAN REDLICH, ESQ.
Corporation Counsel

BY: DORAN GOPSTEIN, ESQ. of Counsel

- - -

HLhb

THE CLERK: De Felice vs. the Board of Education.

THE COURT: Sorry to delay you gentlemen so very long, but with the Marshal's problems and traffic, it's impossible to get anything started on time these days.

All right, Mr. Todel.

MR. TODEL: If the Court pleases, I had made a request of Mr. Thorne when he was on the stand with reference to bringing a copy of the report.

THE COURT: The first part?

MR. TODEL: The first part which I have been for the longest time trying to get hold of and Mr. Thorne said he would have it here yesterday, and I mentioned that to Mr. Gopstein and they mentioned they would try and get that report.

THE COURT: Was he able to locate it?

MR. GOPSTEIN: We will try and get it today. There was a misunderstanding. I asked my associate to ask Mr. Thorne for a particular book; he thought it was another thing that we were talking about. I'll try and get it today.

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I have not seen it myself, your Honor.

THE COURT: I think it spoke as of an earlier date.

MR. TODEL: '68-'69, which no one seems to have been able to put his hands on.

THE COURT: Well, it will turn up somewheres, it's bound to.

MR. TODEL: May I proceed, your Honor?

THE COURT: Yes.

MR. TODEL: Mr. Scribner.

H A R V E Y S C R I B N E R , having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TODEL:

Q Dr. Scribner, you are the Chancellor of the Board of Education, Cityof New York?

A Yes, I am.

Q And how long have you been Chancellor of the Board of Education?

A Since September 1, 1970.

Q And prior to September 1 of 1970, what type of work did you do?

A Prior to that, two and a half years prior to that,

I was Commissioner of Education for the State of Vermont; then to go back eight years prior to that, Superintendent of Schools, Teaneck, New Jersey.

Q Could you tell the Court the duties and responsibilities of the Chancellor of the Board of Education?

A Well, I am the Chief Administrator for the Board of Education and the Board establishes policy. I am the implementor under decentralization law, I serve for the entire city. I serve as an appeals officer for student grievances, parent grievances, School Board grievances, so forth.

Q Also, one of your responsibilities, at least as the Chancellor for the Board of Education, under this new set up of the community district, is that the Central Board and you have responsibility for the high schools of the City of New York?

A Yes, we do.

Q Coming as Chancellor of the Board of Education of the City of New York with your past experiences as a Superintendent in Vermont, I imagine that you have gotten familiar with the general policy of the Board of Education with reference to integration and also the policy of the Board of Regents of the City of New York with respect to integration of schools?

A I would have to say I am better acquainted with the Board's thinking as it relates to integration. As to the regents, I read their releases, I read their releases but I wouldn't say I'm totally familiar.

Q I believe in one of your speeches that you had made or testimony that you had given before the Congressional Committee you referred to the fact that Commissioner Allen, who had been the State Commissioner of Education, also the United States Commissioner of Education, stated that the goal of our nation ought to be to provide an equal educational opportunity for all in a racially and socially integrated society. Did you say that? You would agree with that type of statement?

A Yes, sir.

Q Would you also agree with a statement that I read in one of the publications of the Board of Education that considerations of relieving racial imbalance will probably weigh heavier, the greater the concentration of minorities in certain given schools?

A Will you repeat the first part of that.

Q Consideration by a Board of Education for relieving racial imbalance will probably weigh heavier, the greater the concentration the minorities in given schools.

A May I ask for --

Scribner

Q Sure.

A Are you saying that the more segregated a school -- are you saying that the more segregated a school appears to me the more heavily must weigh the consideration to doing something about it?

Q I am just quoting from a statement.

THE COURT: Would you quote it again, because the prospectus seems to slip away in meaning. Is that one that we have here?

MR.TODEL: I am referring your Honor to Exhibit 5 which were attached to Mr. Anker's affidavit on a motion for a summary judgment, and I am referring to the sentence beginning at the bottom of page 3 of the first section of that report. Exhibit 5 is that separate volume, your Honor.

THE COURT: All right, that's Exhibit 5.

MR. TODEL: May I read the sentence to you? There are two sentences. The earlier sentence might be clearer: "There are two mechanical tests to determine the extent to which any of these factors must be given weight."

They were mentioning a number of factors above this. However, it goes on to say, "considera-

tions of relieving racial imbalance will probably weigh heavier, the greater the concentration of minorities in given schools."

THE COURT: Is that -- what page is that?

MR. TODEL: Pages 3 and 4.

THE WITNESS: I don't want to be difficult.

MR. TODEL: What I will do --

THE WITNESS: And the factors you refer to right above the --

MR. TODEL: That's right.

THE WITNESS: May I just them to read it?

THE COURT: Yes, that will give me time to get a little mechanical assistance.

THE WITNESS: Yes.

THE COURT: Could you wait just a moment.

THE WITNESS: Yes.

BY MR. TODEL:

Q Would you agree with that statement?

A Yes, I agree with that.

Q And would you agree with the next sentence after that, "They weigh heaviest when a school becomes predominantly Negro, for that, as educators and the Court have recognized, is when the education offered in that school becomes most clearly unequal."

Would you agree with that?

A I agree that's a premise on which we have been working.

Q And would you read the next sentence there.

Would you agree with that statement: "It is irrelevant that the 1960 statement of policy of the Board of Regents, which addresses itself to the problems of student body largely of homogeneous ethnic origin, finding that such student grouping results in inferior education to minority races; and that the Commissioner of Education in his memoranda of 1960 speaks of the educational inadequacies of only those schools in which the enrollment is wholly or predominantly Negro.

A Yes, I believe that's quite accurate. I think we are developing some reservations to that now as we move into the 1970's.

Q We will go into those reservations, also.

Let us face directly with that particular problem. What reservations do you see with reference to that last statement?

A I think the feasibility of integration in New York City and in other larger areas in this country, until we get to the point that we can become a metropolitan area without restrictions as to political boundaries, forces us to take another look at the programatic aspect of education

as being a very real concern, along with integration, wherever feasible.

THE COURT: What was the expression you used, resort to programmatic?

THE WITNESS: Yes, your Honor. I believe there becomes a --

THE COURT: What was the expression you used?

THE WITNESS: That we be concerned about programmatic changes as well as integration.

Q What do you mean by programmatic changes?

A I am very concerned that secondary schools of this city, since we are talking about the city and even Brooklyn, since we are talking about the Borough of Brooklyn, to a large extent, need major changes in their programs with which they deal, and I am not talking about my desire for integration but I am saying one will not -- the other will not --

THE WITNESS: Your Honor, I don't know how much conversation I can have. The last time I was in court I was told to use yes or no answers.

Q In this particular case I think the way it has been going, I think it's important that we get a full

understanding because even though we may be on different positions, we are not really in an adverse type of position except on one or two factors here.

A You asked me, for instance, about my past experience, and in 1961 I went to Teaneck, New Jersey. At that time I was completely convinced that moving bodies and putting minority youngsters with white youngsters was obviously a first step and hopefully a partial answer to the solution to our whole society set of problems.

Since that time and since I am in New York City, I recognize the impossibility in some instances of bringing this about, and therefore cannot cross off schools but move rather into the program area.

Q I see. In other words, I think we do not disagree that there are certain areas in the City of New York where you have to take a second look over the thinking of 1960. There is no --

THE COURT: Can we go back on that a moment and talk in terms of say a school in which the distribution of a population was, just for the sake of using some numbers, 50 percent other and 15 percent Spanish-speaking origin and 35 percent Black, and that the Black students and the students of Spanish-speaking

origin was largely drawn from -- well, to describe it very loosely, the Brooklyn portions and the more northerly part of the Brooklyn portions of the Franklyn K. Lane District. Would the programmatic problems exist within the school and with respect to the children from the area described, some programmatic necessities, if you call them that, or programmatic indications, anyway, would be in and of themselves the limit on the amount, genuine classroom integration that you could get within the school?

What I am thinking of is, I suppose you better frankly dip into your own experience. I went to a grade school where we had four terms in the class, seventh and eighth year, we were together, and fifth and sixth year, we were together and we were grading people semi-annually; so you have four different levels of education going on the same time in the same classroom under one instructor and that had obviously problems, and it occurs to me in exactly the same way that if you have such a mix as the one I suggested, five, 13.5, you may have an integrated school, but does it have

a single integrated classroom and, if so, would it ever respond to the integration ratio that prevails for the whole school of 513.5.

THE WITNESS: Your Honor, I believe that it would have. That's my reservation, that you can put the bodies together in a building but unless you have a program that speaks for integration, you can still have segregation in that building. I don't know if I'm on the same target that you are on.

THE COURT: That's what I was hoping you would begin to explore here, because in a way I think that was something that was touched on to some extent with Mr. Anker yesterday in talking about programmatic assistance and, to use Dr. Scribner's term, into Franklyn K. Lane to the degree Mr. Anker said was not made available to other schools.

Q You mentioned in your last statement not from the judge but the question I put, the thinking has to change with reference to the laws in the metropolitan area.

With reference to the large metropolitan area and we have to think in terms of whether or not we should have the restrictions, I think you used the word political.

A Boundaries.

Q What do you mean by restrictions of political boundaries?

A I think that integration, as I would think of it at least and as many people would look at it is rapidly becoming impossible in New York unless you look beyond the political boundaries of New York City into the suburbs and are able to effect changes back and forth between those two areas.

Q Say for example in the City of New York, since you have been here for the last two years now, can you visualize what changes could occur on a multi-district type of educational system?

A I have no specific changes in mind. I am only looking to the fact that constraint should not exist if a change were desirable. Judge Roth, I believe, in Detroit recently ruled on some question that 52 suburbs become a part of the greater metropolitan area to bring about integration.

Q Now, as a Chancellor or as the Chief Executive Officer of a school system, sometimes you just cannot work in an ideal situation and I agree, with reference to having a perfect integrated school system here in the City of New York; however, as an Executive Officer, in situations where you feel that can be accomplished, do you feel that's some responsibility on the part of the Executive Officer or

2 on the Board of Education?

3 A Yes, I do.

4 Q Now, let me give you an example of some of

5 the testimony which was elicited during the course of this

6 trial in the last two days.

7 We have a situation in the northern part of Brooklyn,

8 or let's take -- forgetting about Brooklyn. We have a

9 situation in one of the counties here where there was a

10 school located in a white neighborhood and it's a fairly

11 large school and that 1964 and earlier, 1963, 1962, there

12 was an other population or a white population ranging about

13 60 to 70 or 75 percent during that period of time.

14 THE COURT: Population was what?

15 Q White, ranging in that three-year period,

16 ranging from 60 to 70 percent of the school population of

17 that particular school.

18 A Yes.

19 Q And the Board of Education was made aware of

20 the changing conditions in the school and discussions were

21 had with them with reference to a possible rezoning of that

22 school. Now, this school is located in Brooklyn and it's

23 right on the border of Queens and Brooklyn, and on the other

24 side of the border you have a white population which is 90

25 percent or more in that area. You, as a Chancellor or a

Superintendent coming into the situation in 1964, in 1965 or even today, if such a situation happened, do you have any affirmative duty to do anything?

A That's very hypothetical.

Q It isn't hypothetical. I am stating facts that came out during the course of this trial.

A You are saying -- may I put it in my words?

Q Sure.

A You are saying this school located in a basically white community was changing from a white school to a Black school or minority school; yet, across the line, in Queens, it was an all-white population?

Q Right.

A '65 and '64. '64-'65, that's very difficult for me to answer. I would assume, yes, that there was a responsibility there but, of course, I can only testify realistically to what's happening today to that area across the boundary into Queens.

MR. GOPSTEIN: Either it is a hypothetical situation or it's not. If what we are presenting on the facts at Franklyn K. Lane, I think the question of when --

THE COURT: I think Mr. Scribner is aware of the face behind the veil.

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Scribner

MR. GOPSTEIN: I think if we could make it specific as to what the duties may be now --

THE COURT: I judge from his answer he also located the booby-trap, if we could call it that.

MR. TODEL: This is off of the record?

THE COURT: Sometimes the effort to be lucid changes in the course of the shaping of the question.

MR.TODEL: All right, let us deal directly with Franklyn K. Lane High School. There has been testimony here today, not today, but in the last two days or so, that the Board of Education did something to attempt to alleviate a condition in the Franklyn K. Lane zone. In other words, they reduced the size of the zone on the western portion a small bit and they introduced an optional program which a number of children were able to go, opt out to other schools, although the statistics are those opting out as of June of a particular year -- and doesn't tell exactly how many children went in in September or October.

There is no question the Board has done

certain things there. In fact, the Board -- the testimony has been in taking off part of the Lane zone it put that part into a 99 percent Black area, a high school -- namely Boys High School zone; these are the facts I have given to you, were elicited during the course of this trial.

THE COURT: I should tell you both, Mr. LeGendre and I both went to Boys High School. Mr. LeGendre pointed out he was later than I.

MR. TODEL: And during the course of this trial there has also been testimony that the transportation facilities which existed in the Franklyn K. Lane zone, buses, subways, are sufficient for children to go to school in Queens, and there are sufficient transportation facilities in Queens for children to go to Franklyn K. Lane. Do you feel, knowing those facts today as you say, that there should not be an effort on the part of the Board of Education to rezone a district, Franklyn K. Lane District, which has 80 percent Black and Puerto Rican school population, so that children from Franklyn K. Lane zone can go to Queens and children from

Queens go to Franklyn K. Lane.

THE WITNESS: Sir, when you say to Queens, Queens and Franklyn K. Lane, are not the basic issue in my concept of this. The basic concept comes where? In Queens? Are we saying we should take these youngsters --

Q Well, let me tell you --

A We have a domino theory. What I'm trying to say, this has been analyzed quite thoroughly. There has been movement made in one school that might be listed as being different from Lane, namely, I think, Groover Cleveland, in which there are ninth and tenth graders who are later -- and this is a minority population -- will increase in the eleventh and twelfth grade; therefore, we have to take that into consideration as we talk about making changes in the student body.

Q Well, for example, since you mentioned Groover Cleveland, we have a situation that in the period of five or six years the other population has gone up from 62 percent to 85.6 percent.

A I believe if you studied the statistics today --

THE COURT: Let's see if I understood your earlier answer, that is, if you took a profile of the four years at Groover Cleveland

along these lines, that you would find a year by year growth or diminution in the other percentage entering into the overall aggregate for the school?

THE WITNESS: Your Honor, I have to warn the Court I am not that able to give you statistics, but there are members of the staff that can -- that's the understanding that I have from them -- that in the ninth and tenth grades a beginning has been made and, as more ninth and tenth graders become eleventh and twelfth, that change is going to take place.

Q Can these statisticians and people who project on the part of the Board of Education also explain in Groover Cleveland you had a Black population number of approximately 13- or 1400 and suddenly it is reduced to approximately 5- to 600, based on these projections you mentioned?

A I don't have the answer to that. The reason I am able to answer the fact that a change is anticipated, I was asking the same question you are about that particular school.

Q You understand, Mr. Scribner, that actually in the City of New York there are no political boundaries which would prevent -- which would create problems with

reference to taxes, as it would be if you went into Westchester or Nassau County, we have a one-school system, whether it's Brooklyn or Queens or Manhattan or the Bronx.

A Yes, sir.

Q It has been testified by some of the witnesses here that the Board of Education really takes children from one borough into another borough; like in the general specialized schools, and that there are other situations in Brooklyn and Queens where that does occur?

A Yes.

Q And for example I show you that Groover Cleveland, which is this area over here (indicating) does take in a portion of Brooklyn and has for quite a number of years taken in that portion of Brooklyn; that's directly above concentration of Black population in Brooklyn. Would it surprise you to know that that particular area in Brooklyn was, up until just very recently, called Little Italy, and was almost completely a white area; would that surprise you?

A No.

Q In other words, a small section of Brooklyn which had a white population a number of years ago is placed into Groover Cleveland, that in and of itself does not surprise you at all?

THE COURT: I don't think we have any

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evidence, Mr. Todel, as to when that little tongue was included in Groover Cleveland, whether it's been in there through generations or not.

Q On one of the maps there was a line which is on the other side but apparently wasn't continued through and I don't know the exact date, the map of the Brooklyn schools there.

r2 A That's precisely why I say it doesn't surprise me because the time that it took place the existing circumstances, what the conditions were, all have to be a part of any consideration for changing patterns in New York City, as I see it.

Q And would the feelings of the community have anything to do with decisions made by the Board of Education?

A I am sure they do. There is always consultation. If you are putting that into light, do they, they persuade you to make the final decision. Again, there is always two sides to every zoning problem that comes down; the noise is as great on one side as it is on the other side.

I sat in on about three of these last year and I assure you whether it be political interest on one side, there is an equal number on the other side; it's all there at the table, each looking for his little piece of turf.

Q Say for example there has been some testimony

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with reference to the zoning problems of Hillcrest in Jamaica, and I imagine that you participated.

A I heard them, yes.

Q And that was a situation where you had a new high school, approximately six blocks away from another high school?

A Where we zoned up to six blocks of the other high school, right.

Q Do you recall what was the reason for your zoning in that fashion?

A The specifics I don't know. I assume it was generally to get an integrated student body, but Hillcrest, I'm glad you raised it, because it's precisely proof of programs well worked -- programs will make integration work and work to the advantage of the student body, and though we felt heavily and hard and we are threatened on that particular opening, I must say that the parent body at Hillcrest has not given me any great degree of flack since then.

Q When for example Franklyn K. Lane was turning from an almost 30-40 percent Black to now almost 80 percent Black, do you know what programs were supplied for Franklyn K. Lane during that period of time?

A I really don't. I know that I had met with Franklyn K. Lane people very recently because, again I'm consistently

of the belief that we must make changes in programs to salvage what integration is taking place, moving the bodies together, that in and of itself will not make the change.

Q For example, you take the situation of Franklyn K. Lane, where you have an entering class of the ninth grade and a smaller amount in the tenth grade totaling approximately 1900 to 2,000 students coming into Franklyn K. Lane as of September of this year, September and October of this year, almost constitutes half of the student body.

THE COURT: What was your number, 1900 in ninth graders?

MR. TODEL: Combination of 1900, which combines the ninth and tenth graders coming into Lane for the first time, it's approximately 1300 ninth graders and about 600 tenth graders.

THE COURT: That's in a school population.

MR. TODEL: Of about 4700.

THE COURT: 4700.

Q As an educator, would that large group of students coming into the school, coming from an area where the feeder schools that feed into Franklyn K. Lane have students who on the reading range of these various feeder schools or on the tests that are given by the Board of Education, I.S. 271, only 6.1 percent of the children who

took the test of I.S. 271 read above grade level or at grade level. It doesn't mean that the 6.1 percent read above grade level came to Franklyn K. Lane.

You as an educator, what type of programs can you give to that school to see that the children who attend Franklyn K. Lane receive an education?

A Mr. Todel, in New York City no man sitting in my position is going to give an educator a program. He is going to attempt to furnish him with the resources so that -- and the rights -- along with the responsibility so that that leader could have brought those youngsters in there, 400 a day, five days, rather than all 1900 on a single day; that's why I'm saying program-wise we can adapt ourselves to these situations, if we have that kind of initiative, spirit, I think we could do it.

Q What type of program can you give these children?

A The leadership has to give the program. We have to give them the resources to help them do it.

Q What are the resources you are giving in that type of situation in Franklyn K. Lane? May I help you on this?

A Go ahead.

Q There has been testimony for example that there

are 300 children going to Franklyn K. Lane who are in the college-bound program. It means they have one guidance counselor for each one hundred students. They have classes for about 14 or 15. They have many other services. There are 300 children or about another hundred children in upward mobility programs. They also have smaller classes. What other things are you doing for the rest of the school? What other resources have you given to the rest of the school, faced with the student body that's coming to that school?

A The resources we give are in terms of the staff, financial resources. The leadership then converts those resources into the programs that he so anticipates fits the needs of those youngsters.

Franklyn K. Lane, in terms of our academic high schools has resources equal to and better than, I would say, almost say, any of them, but I better say most of them.

Q They have resources equal to or better than most of the schools. Are the resources that they have sufficient to give these children the type of education that they should receive?

A Well, to know what the type of education is that they should receive is a very difficult question.

Q Let me ask you --

A (Continuing) But I wou'd like to answer your question,

if I may. That's precisely why we had the meeting on Franklyn K. Lane is to advise the leadership. He doesn't have to run a 4600 -- I believe that's the enrollment -- 4600 pupil school as have always been run, with the principal sitting in the corner on the first floor, staff members throughout the building. He can break that up into smaller numbers and utilize his resources in the manner he thinks they can be best utilized and we would work with him towards that end.

Q In other words, you would it up into many schools, if that's it?

A If that's what the staff decides they would like to do.

Q And there is sufficient space and teachers for that particular school and administrative staff for the mini-school.

You're saying that the Board has a sufficient staff or Franklyn K. Lane has a sufficient staff to have six mini-schools; is that what you are saying?

A Certainly.

Q And also sufficient staff for, I believe the testimony has been that 70 percent of the entering class or those who have taken the achievement test right below the state requirements of minimum competency in the reading,

70 percent of the 700 or 800 students that took the examination rated below minimum standards in reading; and also an additional 7800 didn't even show up to take the exam, and you say that --

THE COURT: Now wait. What you mean, I take it, is that this is based on administration of the test to the 30 percent of the entering class who submitted to it?

MR. TODEL: That's right, yes, approximately 30 percent.

Q And you say that there is sufficient staff for that type of school population in Franklyn K. Lane?

A Sufficient staff has many meanings to it. I'm saying to you that that school has as large as, and I believe larger staff, than most academic high schools do; that they have the rights and the responsibility to break that school up into as many mini-schools as they believe would be workable; that they may utilize that staff in a manner which best meets the needs of those students, and I am saying to you that I don't believe that the high school as it now exists, one principal in charge of 4600 youngsters, are -- high degree of non-attendance -- large amount of absenteeism is meeting the needs of the youngsters, but I'm not saying that that is necessary because of any factors other than the

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administration and the staff with the students having thought it through and done some planning on it.

THE COURT: Can we go back on the mini-school idea?

Q How many high schools in the City of New York have mini-schools?

A Harran High School is in its second year of having broken the entire high school into 16 mini-schools.

Q And Harran High School is a commercial high school; is that right?

A No.

Q Academic?

A Academic high school down in Manhattan, down about 49th -- somewhere in that area, on the West Side.

THE COURT: Is that now with the 16 mini-schools regarded as academic or as a comprehensive?

THE WITNESS: I would like to think of it as a comprehensive high school. Some of the mini-schools do something with shops, others may have urban problems as their center of interest, and a third one may have aviation, and there are other academic high schools that have a mini-school, but in those instances it is usually not a component of the school but rather -- yes,

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it's a component of the school rather than an integrated operation with the school.

THE COURT: But with such a re-organization as Haaren, the term 16 schools is fairly genuine in -- the students knowing which of 16 schools he's in or whether he knows or not is actually --

THE WITNESS: They get together and they decide on 16 themselves, around which groups of students will concentrate then where they are using their guidance personnel. They fit these youngsters into any one of those 16 mini-schools, maybe not their first choice, so the youngsters have a commitment that this is the group he wants to be with.

I don't want to mislead you and tell you that's all fine. It has problems.

THE COURT: But it involves some conscious choice and an effort which can't always be successful.

THE WITNESS: And was primarily designed by the staff with the leadership.

Q Is there any other school besides Haaren High School which has mini-schools?

A Broken down into mini-schools? NO.

Q Haaren is the only one?

A Yes, in its second year.

Q How is the program working out?

A We think it's worth continuing. I am not about to say it's the answer. It serves as a fine example as to what might have to happen with these over-sized high schools in New York City, if the staff and the leadership can agree upon it.

Q Now, there has been testimony in this case at a hearing which has been made part --

THE COURT: Maybe we ought to go back. I think this whole part of our case here is pretty important. When we talk about these different measures of reading levels which are in the intake of Franklyn K. Lane, do we have any means of knowing the extent to which the seeming limition on the child's learning capacities are remedial and which of them for psychological or physiological reasons are simply not remedial or absolutely not remedial in an academic program?

THE WITNESS: I'm afraid most of the information we have would be subjective information. As you probably know, New York City some years ago decided to discontinue what we then

called int[illegible]ligence tests ir IQ tests because of the many inequities within them, but I believe within a school, providing one has an open mind and equal expectations for all people, that there could be some good judgment. I understand your question thoroughly. Of course, 50 percent in a typical normal situation would be at grade level or above.

THE COURT: That's a matter of definition, "at grade level."

THE WITNESS: It's the result of X number of thousands of tests given across the country in which youngsters fell. What we don't understand many times, though, we don't want our youngsters to be in that 50 percent below level. It's quite normal for 50 percent of the youngsters to be in that level.

THE COURT: Now, the second aspect of it, I suppose, that with this special situation coming out of the elementary and intermediate schools that feed into Franklyn K. Lane, those schools have to feed to some school any way, because there are schools from which one graduates well below the minimum reading level, so that

wherever those children go they are going to require special assistance and this is not exactly on target, but it's part of this picture.

THE WITNESS: We have received in New York City the last five years millions of dollars for youngsters from poverty backgrounds and yet the state can surely show that the trend has still been going slightly downwards rather than upwards. That's why I speak consistently and in a boring manner that there must be --

THE COURT: The application of known remedies has not been adequate.

THE WITNESS: Strangely enough the research is quite clear on the facts. We tend to do more of what we have been doing, that hasn't gotten us very far. The research is quite clear on the facts that the more paraprofessionals you have in the learning program, the greater amount -- remediation is taking place for those youngsters who have been able to overcome some of their difficulties.

Q Do you have any paraprofessionals in learning environments?

A We call them aides. I am not sure. I know we have

aides.

Q The aides are really people who help out in the hallway or on attendance or see that no one comes into the school, but actually working, actually with the children, do you have paraprofessionals teaching the students?

A I don't know. We have some 13,000 paraprofessionals.

Q They are school aides?

A These are paraprofessionals. The difference, the paraprofessional is on a career ladder and built into their contract is an opportunity to go to school to some day get up the ladder. The aide is an hourly paid person.

Q So as far as you know, you are not sure whether or not in the high schools you do have paraprofessionals?

A No, I am not.

Q There has been testimony, Dr. Scribner, during the course of this trial at the early part, at a hearing which was made part of this trial, that if four or five hundred of the students, a good part of the students who come from the western part of the Franklyn K. Lane zone were able to go to a school which did not have such a large Black population, and that children in the other category from the other sections of the City of New York would come to Franklyn K. Lane, that school would be in a better position to give the services, based on the resources that

it does have.

Do you feel that that is possible or something feasible, as far as the Board of Education is concerned?

A I don't know about the feasibility of it and then again, when you lump 4- or 500 youngsters and say merely -- are these Black youngsters?

Q Yes.

A I can't make any blanket assumptions on 4- or 500 Black youngsters. They may be of value to the school in terms of high ambitions, rather than a detriment to the learning situation. I can't make that evaluation.

Q But if that was possible or feasible on the part of the Board of Education in reducing the number of Black children going to Franklyn K. Lane and increasing the number of white children, isn't this something which could be explored by the Board of Education?

A Yes. Now, if you want to put it on an integration basis, then I have to say to you, sure. If we could cut Franklyn K. Lane back from its 80 percent to something less than that, I think that's in the direction -- worth any exploration and a favorable goal which we ought to look then. Then you talk about feasibility. You have lots of other dominoes in that game that you have to look at.

Q What is involved in feasibility?

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A I would say before we can make changes we have to look to the accessibility of the school. We have to think about the travel conditions. We have to consider distance. That's one factor we have to look at, the utilization factor of the schools involved. There may be four or five of them involved in this particular situation, and one thing we have done in Franklyn K. Lane is attempt to reduce the utilization factor in that school. There are probably other items that I don't think of offhand but these are all part of the feasibility of planning the change.

Q Do you know of your own knowledge, or can you find out whether or not there has been serious studies with reference to changing the zone of Franklyn K. Lane with reference to the feasibility of changing the zone so that children from Brooklyn could go to Queens, and children from Queens go to Franklyn K. Lane?

A Mr. Todel, when you say from my own knowledge, the knowledge I have on it is probably in one or two ways. One is I do know that there is an annual evaluation of zoning done by those people in charge and the high school superintendents, and I must say to you, since I frequently am critical of headquarters, I think they did a very thorough job and I am amazed by the hours they put in.

Two, I don't know of a specific study, no, but I do

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know, since I have been here, I have read most everything possible on Franklyn K. Lane. I have been most concerned about it.

I read this latest book that's out about the race war in the high schools. That's why we move forward in bringing in the leadership. First of all, we talked about with some parents in the area, block leaders and the administration, then we had a second meeting with the administration alone, attempting to make whatever reasonable changes we could make in terms of -- for instance, may I tick off some of things we talked about or don't you want to know?

Q I would like you to, because there had been some testimony in the trial with reference to this meeting.

A We got into the whole aspect of the security of the school, which is a very serious situation in New York City, not only in Franklyn K. Lane but in many of the high schools. It was concluded that from that meeting the Police Department has been very cooperative, however, young people in schools don't particularly like the idea of policemen being a part of the learning environment.

We talked about the possibility of setting Lane up for a training program for our security program. We would quite naturally take people that are trained, that are part of the building, and move them out again. That's one thing

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we did. We also had a visitation of Lane youngsters who came of their own volition, who wanted to be of help in making Lane a better school. They wanted to do something with an internal security of their own. So I, number one, said -- I didn't name the money -- I said 2- to $3,000 would be established. I think they call it a Marshal Plan.

THE COURT: I take it that's M-a-r-s-h-a-l?

THE WITNESS: Yes. That's been made available to them.

A (Continuing) I got an agreement from Mr. Selub that he would be favorably inclined to permit these youngsters, properly selected, to select their own coordinator for this activity.

THE COURT: You mean that would be a coordinator from the faculty or administration?

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THE WITNESS: Yes, they could make their own choice, some members of the staff for whom they had considerable faith and acceptance.

A (Continuing) We then got into programs and it is my belief that you cannot man a program, that the program has got to come from the leadership of the staff and the students working together; and I said that I would make $50,000 available on a mini-grant basis for teachers who wanted to submit proposals to turn that school around to make it

something that would be more acceptable to staff, students and meaningful to them at the same time.

Q During the course of any of these discussions in the last few weeks, was the question of zoning brought up?

A Yes, zoning was mentioned as part of the meeting with the parents and it was mentioned that the meeting with the staff, with the exception that zoning is something that is going to be reviewed. Anyway, we were there to talk about programs at that particular time. We agreed that zoning would not take place now, but the program was not to start being changed now. There was no denial, by the way, to the subject of re-zoning. It was just that it was not the most immediate question that we needed to resolve.

Q In other words, as far as you are concerned, as the Chief Executive Officer of the Board of Education, at least as far as you were concerned, your mind is open always to the re-zoning of schools; is that correct?

A Certainly.

Q And a line between Brooklyn and Queens you feel should not enter into that thinking at all; is that correct?

A It's all a part of New York City.

Q I see. And even though schools are administered -- for example, do you know the organizational set-up

for administering high schools here in the City of New York?

A Yes, sir.

Q In other words, high schools are assigned to particular superintendents?

A When it comes to feeding, we feed back and forth across lines. I can't be specific and tell you, but I'm told in several instances when I talk about my own openness to review zoning I have to keep this -- I have to consider the affect on all schools as it relates to zoning.

MR. TODEL: I have no further questions of this witness.

THE COURT: We will have a short recess now.

(Short recess.)

MR. GOPSTEIN: Your Honor, I have no questions of the witness at this time.

THE COURT: This is redirect?

MR. TODEL: I thought it would be brought out on cross but what I am trying to understand, Mr. Scribner, what do you mean by more programs or better programs? I'm still not quite clear in my own mind as to what you really mean for leadership to provide programs in the student population that we know exist at Franklyn K.

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Lane High School?

THE WITNESS: We have now many programs in New York City. We have co-op programming for schools, part-time work; part-time, 7,000 children involved in that. We have another program, executive internship, where I have a high school youngster who stays with me for a half year. That young person goes back to school and gets full credit for a half year.

We have another program in satellite academies. We have another program where young people are participating in day care services, medical services. We have tutoring where high school students are tutoring students in a lower age. We have all of these programs going. We have a tendency in some schools to make something called a false distinction of that which is learned from lifework from that which is learned from the classroom. I think we have to make every effort possible to break down these false distinctions.

You have a young people who get themselves interested in learning from whatever activity they do from which they may learn, and that may

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vary as the number of students vary.

BY MR. TODEL:

Q Well, Franklyn K. Lane does have college bound programs. It does have outward mobility programs. It does have a step program -- I believe it's called -- and does have a very limited cooperative program. It does have these programs and it will take care, from the testimony --

What programs do you suggest the leadership should give to these children?

A I think the leadership should work with its faculty, that they should explore all of the possibilities that might be open to those younger people and then they should talk about these many alternatives to those students who are in that school, and they then should have something to say about their destiny. And you prove the case to be something less than it ought to be when you say that they have 400 youngsters already involved. There should be 4,000 youngsters involved.

Q And that is because, as you feel, it's the leadership of the school; is that what you are saying?

A I didn't say that. It's the responsibility of the leadership of any school to analyze programs this way.

Q One of the first programs in the City of New York has been started in that school this year of Urban

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Affairs, it had been established in Franklyn K. Lane?

A Yes, I know about the Urban Affairs Program.

Q That was Mr. Horst?

A Yes, doing an excellent job and they have many dedicated teachers. That program has what, 75 youngsters in it?

A Q It may have about that, maybe a little less.

A I want to pull out more Mr. Horst's. It's up to the leadership to excite it and create it because obviously something is wrong.

Q Yes, something is wrong where the bulk of the children coming to Franklyn K. Lane cannot read or write. I would say there is something wrong.

A But when we talk about education, that's where it begins. If we could prescribe what we want to, that would be great, but unfortunately that's not the spirit of education.

Q And there has been testimony at the hearing, which has been made part of this trial, that these children can be educated, but not in the large numbers that are coming to Franklyn K. Lane. And you feel that that is a statement which you could not agree with, I take it?

A It's a statement that may be accurate but I want to test it, and the only way I know of testing it is to create

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more programs, to work harder than we are to lift our sights and our expectations and our hopes. I don't know where else to look for this acceptance of leadership. I'm questioning Mr. Selub but I am not faulting him at this point.

I know Mr. Selub. I went to Washington before the Select Committee on Crime; we were both subpoenaed there. I met him on two occasions since then.

Q And also you say you would be open to questions as the Chief Executive Officer as to the possibilities and the feasibility of the rezoning of Franklyn K. Lane?

A Certainly, the feasibility added to it, sir.

MR. TODEL: No further questions.

MR. GOPSTEIN: I have no questions.

THE WITNESS: Your Honor, if I embarrassed you in any way by not showing yesterday, the word didn't come quite that specific to me.

Is it permissible to say it's nice to meet you?

THE COURT: Do you plan another witness?

MR. TODEL: The only question I did have, I had always been under the impression that the report which we have which is Exhibit 5 attached to the papers, there had been an earlier report which I had never been able to get hold of.

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That's what you are digging after.

MR. GOPSTEIN: I have never seen it, myself.

THE COURT: You do or don't?

MR. GOPSTEIN: I am trying to get it but I have never seen that report. It is not a report that I am keeping for myself.

THE COURT: I certainly got the impression that Mr. Thorne -- that it did exist, didn't you?

MR. GOPSTEIN: Yes, I did.

THE COURT: So, I have confidence he will locate it.

MR. TODEL: It's at least a hundred thousand dollars that was spent on that report. I have certain information, I don't know if it's reliable or not, that's why I would like to see that report. If I do, I have no further witnesses, subject to my receiving that report.

MR. GOPSTEIN: If it's there at all, I will get it.

THE COURT: And any way, will you give us areport on it and make sure you ask Mr. Thorne about it. I know he has a lot of things to do --

MR. GOPSTEIN: We'll do that this afternoon.

THE COURT: 10 o'clock tomorrow morning.

(Whereupon, the hearing was adjourned to December 18 1972, at 10 a.m.)

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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CHARLES DE FELICE :

-against- : 71 C 502

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK :

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United States Courthouse
Brooklyn, New York
December 18, 1972
10:00 O'clock A.M.

B e f o r e:

HONORABLE JOHN F. DOOLING, JR., U.S.D.J.

HENRI LE GENDRE
ACTING OFFICIAL COURT REPORTER

APPEARANCES:

MORTIMER TODEL, ESQ.,

Attorney for Plaintiff

NORMAN REDLICH, ESQ.,
Corporation Counsel

BY: DORAN GOPSTEIN, ESQ.,
Of Counsel.

Attorney for Defendant.

. . . . . .

MR. GOPSTEIN: Here are the statistics, your Honor.

Your Honor, could I have just have another three minutes to organize the exhibits?

(Pause.)

MR. GOPSTEIN: I would like to call Dr. Zack.

D R. J A C O B B. Z A C K, having been called as a witness, was duly sworn by the Clerk of the Court, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. GOPSTEIN:

Q Dr. Zack, would you tell the Court what your present employment is?

A I am adjunct associate professor at the graduate school of Pace College.

Q And what courses do you teach in Pace College?

A I am teaching one course in leadership and management and another one in the administrator and the community. In addition to that I am supervising a group of people who are planning to be principals and assistant principals.

THE COURT: Principals and assistant principals and superintendants.

Q Have you been associated in the past with the Board of Education?

A I have.

Q When was your latest employment with the Board of Education?

A I went on a retirement leave as of June 30, 1972.

Q And what was your last position with the Board?

A I was the coo dinating assistant superintendant of the Office of High Schools.

Q And how long did you hold that position?

A Three years.

Q Could you give us the dates?

A Yes, from September 1969 to June 1972.

Q And could you tell us what positions you held with the Board, going backwards chronologically, before that?

A Before that I was an assistant superintendant in the Office of High Schoos. During the period when the high schools were decentralized I was serving in the field as the advisor to the district superintendants who at that time had charge of the high schools. Prior to that time I was an assistant superintendant in the office of High Schools, and an accounting assistant superintendant before then. I was appointed as principal of Boy's

High School in 1956, and was there technically until '65, although I was assigned to the Board of Education as of '62.

Prior to that time I was the chairman of a department at Samuel J. Tilden High School. Prior to that I was the chairman of the department accounting at Midwood High School. I was a teacher there.

Prior to that I was a teacher at Thomas Jefferson High School and I think that covers it.

THE COURT: In what field was your teaching?

THE WITNESS: Speech and English, sir.

Q Dr. Zack, would you tell us approximately how many high schools there are in the State of New York?

A 94.

Q And are they divided among academic and vocational?

A They are but the present policy is to begin to blur that distinction so that we're not identifying them as academic or vocational any longer. We are calling them high schools.

Q And could you tell us approximately how many students are in the New York City systems, high school students?

A In '72 at the beginning of the year it was approximately

something over 300,000.

THE COURT: 300,000?

THE WITNESS: Yes, sir.

THE COURT: That is for all four classes?

THE WITNESS: For the academic, vocational, every other type. I think that's what you are referring to.

THE COURT: The four year population?

THE WITNESS: That's right.

THE COURT: 300,000?

THE WITNESS: Over, yes.

Q And that would include the students in the still existing vocational high schools?

A That's right.

Q Do you know approximately how many are academic and how many are vocational?

A I would say that it would break down roughly to about forty odd thousand in the vocational schools. The remainder would be academic.

Q Now, in the academic high schools do you know approximately how many students are in the Brooklyn academic high schools?

A It would have to be very rough, but I would think approximately 90,000 plus.

Q And in the Queens academic high schools?

A In the neighborhood of about 65,000.

Q Dr. Zack, are you generally familiar with the criteria that the Board of Education uses to allocate positions among the various high schools?

A Yes.

THE COURT: Allocate --

MR. GOPSTEIN: Positions.

THE WITNESS: Teaching positions, sir, and other --

MR. GOPSTEIN: Could I have this marked for identification?

THE CLERK: Marked for identification Defendant's Exhibit A.

THE COURT: That's exhibit A?

MR. GOPSTEIN: Yes, sir.

THE WITNESS: I wonder if I could reach for a copy over there of which I have marked pages, which will make it a little easier to reach for. Thank you.

THE COURT: Perhaps then you could let me use the one you have before you, --

MR. GOPSTEIN: Yes, I do.

THE COURT: -- for your questioning.

MR. TODEL: I have one, your Honor.

BY MR. GOPSTEIN:

Q Dr. Zack, the book which has been marked or identified as Exhibit A is titled "School Profile, 1970-71, Academic and Vocational High Schools City School District, City of New York."

Could you please explain to us generally what this book contains, what it's purpose is?

A This book was an attempt to place the high schools on a formula basis of allocation. It is an attempt to describe each of the schools in turn, all the significant data and also exactly what is being assigned to them by the Board of Education in terms of personnel, services, et cetera. It's as complete a description as we were able to obtain at this particular point.

Q I ask you to turn to page Roman numeral eight, and could you tell us what the title on top of these next few pages is formulas for the allocation of all positions for the high schools in 1971, '72, and could you tell us what these pages try to do, what they contain?

A These pages attempted to set up formulas for the allocation of all the services that were being provided, the basis for the distribution of the services, and they

try to do it on a strictly statistical basis, making allowances for special needs, but these special needs were once again formulas, so it would apply uniformly to all of the high schools.

Q Now, are the particular formulas, which we will go into in a minute, applicable to tax levy or to reimbursible, could you make a distinction between the two?

A Yes, this applies only to tax levy funds. Tax levy funds are funds which are provided out of the budget provided by the City of New York, and the State of New York, and there are therefore moneys directly derived from taxation.

The reimbursible funds --

THE COURT: But that does include the allocation to the City by the State?

THE WITNESS: Yes. Yes.

THE COURT: So that as both --

THE WITNESS: Generally, the funnel would be through the City agencies, but much of the money, as you know, sir, comes from State funds.

Q And what would be --

THE COURT: Let me ask you: There are no direct allocations of State funds, are there?

THE WITNESS: There is under the reimbursible category, and this is the Urban education fund which parallels some of the Federal money such as the ESEA various titles.

(Inaudible) fund once again comes to the Board of Education, yes, from the State directly, rather than through a City agency.

Q Do the --

A The manner in which we distribute these funds once again must be brought to the State Department, which must approve them directly.

Q Do the reimbursible programs include both federal and state programs?

A They do.

Q And are the federal programs the ones generally called Title 1 funds?

A Yes, there are also a number of other titles but Title 1 is the main input.

Q Now, the reimbursibles, what distinguishes the schools which are the recipients of reimbursible funds?

A Those funds are restricted to those students who are educationally deprived and come from poverty backgrounds

and the restriction there is quite rigid.

THE COURT: And what?

THE WITNESS: Those funds are restricted to those students who are educationally deprived and come from poverty backgrounds, and the restriction there is quite rigid.

Q In other words, those --

THE COURT: They must be educationally handicapped?

THE WITNESS: And come from a poverty base.

Q And is it true that especially in regard to -- well, probably both, but especially federal funds, the regulations are quite detailed as to what constitutes an appropriate program and an appropriate receiving unit?

A Yes, it is. We are governed by guidelines determined by the Federal Government and interpreted by the State Education Department, to which we must adhere or they will withhold the funds.

Q So, in other words, schools which have a higher percentage of the types of students which you were describing are likely to have programs which will be reimbursible out of these special funds?

A That is true.

Q And this will be above and beyond what they receive from the tax levy in the budget?

A That is true. The fact of the matter is the restriction is so acute that the guidelines require that there shall be a maintenance of effort, in other words, any funds coming out of State and Federal funds of the kind that you have described must be an overlay over and above the regular allocation that you make, and in fact, they have introduced a comparatibility factor to make sure that schools are comparable in the allocation of funds before you attempt to put in any Federal or State moneys of a special kind.

Q In other words, if a school was using the reimbursible funds to finance a program which otherwise might come from normal tax levy funds this might constitute improper use of the reimbursible?

A It would definitely be.

Q Now, I direct your attention again to the formulas for the allocation of tax levy funds and I would like you, as we would go down the page, to explain some of these various categories, what the formulas are, and well, let's go to the first one:

Under the broad category, a, of basic teacher allotments we have subdivisions 1, academic

classroom coverage.

Now, could you explain to us -- could you first read the second paragraph into the record?

A "For the fall of 1971 for pupils retarded two or more years in reading, the teacher allotment has been based on an average class size of 29.5. For all other pupils allotments have been made based on an average class size of 31.5."

I think it's important to know with regard to that count that the injunction to make special provision for youngsters who are deprived in terms of educational need is being made out of tax levy money even before we begin to consider reimbursible funds.

Now, what's being described here as the special efforts being made with the tax levy money to meet the special needs of the private kids. Therefore the allocation in schools are made -- were made in this case in this year on the basis of one teacher for every 31.5 students on register, and then for those schools which had retarded on an average of more than two years, two or more years in reading, that average class size was cut down to 29.5, which meant that those schools for those youngsters would receive additional teaching time.

THE COURT: Now what does that mean in

actual formulary allocation, that you would take the number of students who were retarded two or more years in reading?

THE WITNESS: Yes, sir.

THE COURT: -- And see that the overall allocation of teachers to that school was a numbe equal to 29.5 divided into ~~retarded~~ children?

THE WITNESS: That's right.

THE COURT: -- Plus 3.15 divided into all other children?

THE WITNESS: It does make a difference. There are a number of positions that a school will gain that way, as you would see, from the allocation.

Now, with regard to the trade shop class, if you're interested in that, counselor --

THE COURT:Just a moment, please.

THE WITNESS: Sorry, sir.

THE COURT: Okay.

THE WITNESS: Do you want me to run down the whole category?

Q No,categories 2, 3, 4 and 5, they appear to have one formula for all the schools, is that correct?

A That's right.

Q Can we go down to category 6?

A Yes.

Q Remedial reading. Can you explain that?

A In addition to the general allocation, improvement of allocation for those who are retarded two or more years in reading, there is a specific allocation of remedial reading teachers. The theory behind it is that the youngster who is retarded in reading needs smaller groupings generally in all of the subject areas, and then to provide for and assist in remedial reading.

This allocation was made on the basis of one to every 275 retarded readers.

Q Could you go --

THE COURT: Wait a minute. Let me see how that works. Now, was that a second overlay --

THE WITNESS: That's right.

THE COURT: -- on top of the 29.5?

THE WITNESS: That's right.

THE COURT: Then these are for those children who are formally classified as retarded in reading two years or more?

THE WITNESS: Right.

NOw, that doesn't mean that you have an allocation of one teacher specially trained

in remedial reading in this ratio but that the overall staffing is enriched with these additional positions.

I think the intent here is to provide for teachers that will do the teaching for the remediation of reading in addition to their regular instruction.

Q Could you read the next subdivision, category 7, "English as a second language"?

A Yes. Of course we have a large population of youngsters who come into the country for whom English is not a first language. There although the allocation of positions that year was comparatively meagre an attempt is being made to provide positions to teach English as a second language.

Now there is a scale that is used in determining the -- the degree of handicap in the use of English which runs from a level of A through F, and C through F generally would be a category of increasing lack of skill in the use of English. And therefore this allocation was made, an attempt to provide somehow, inadequate although it may be, to resolve this matter. And this comes as an additional overlay where the needs exist.

THE COURT: Let me see if I understand

that. In other words, C means some ability to speak English and then as you go down toward F you have less and less ability.

THE WITNESS: That's right.

THE COURT: And the third sentence, or I guess it's the second sentence, indicates that mostof them are in the C class, is that right?

THE WITNESS: I would think that what we're saying there is that the need of C is less than the need, for example, beginning with D through F, and therefore that you are making an allocation on the basis of 866 youngsters who might fall in the C category as against the fact that the need is so much more intense in the other areas that they are reducing the allocation to one per 140 students.

I think it's an attempt to respond to need.

THE COURT: Well, that 17,320 children in the C category --

THE WITNESS: Yes, that's right.

THE COURT: And in the other one it's what, 5,000?

THE WITNESS: Approximately 6,000.

THE COURT: -- 600 more or less?

THE WITNESS: 5,600 would you make it.

THE COURT: As nearly as my arithmetic holds up.

THE WITNESS: Yes.

THE COURT: Assuming I have my decimals in the right place.

THE WITNESS: Yes. I think that you should know that the effort here is supplemented by moneys out of the reimbursible funds, our [illegible] program, teaching English as a second language, and so that this is only out of tax levy but the supplement is substantially out of another program which runs into some million dollars or more to provide for the same group of youngsters. But the feeling is that the tax levy money should also reflect needs in education.

Q In any one school tax levy funds and reimbursible funds may be combined each for its own purpose to provide a total program for the children who need it, in this case for the children who need remedical instructions?

A That's correct.

Q Could we go to category 8 which is entitled "For the high schools with larger than average population of disadvantaged pupils."

Now could you explain what these programs are and what they provide and where the funds come from?

A Yes. Originally these two programs were developed with Ford Foundation moneys which we were able to obtain -- I remember at a rather dramatic breakfast session with the people from Ford Foundation because we were pointing out to them that there were large blocks of youngsters who were attending high school who were not in vocational schools, but were in the academic high schools and for whom we seem to be making no preparation to bridge the leaving of school into work.

In other words, they were taking a program and they graduated, they basically had no skills.

THE COURT: And were not college bound?

THE WITNESS: Were not college bound, yes. And I can assure you as principal of Boys' High School I was acutely aware of this problem and responded to it with a sense of pain. And for that reason I think I was particularly pressing when we got to the Ford Foundation people.

This is a two-pronged program. The pre-technical program was conceived as a program to find youngsters who had ability but the ability was masked and to see if we could not by concentrating on a shop program which would correlate the activities with regard to science and English and the other areas, that out of problem situations connected with it you could begin to develop the kind of interest which would raise up -- which would raise them to the level of greater production in education. This was coupled with an agreement with a number of colleges, particularly the City University, that the youngsters who graduated from this program would be accepted into college as part of the arrangement.

THE COURT: What kind of colleges, the community colleges? The city colleges?

THE WITNESS: City College, the city colleges, the City University itself, and it was not intended to -- it was intended to fill it --

THE COURT: But not limited to the community colleges.

THE WITNESS: It -- no, it was a two-pronged affair. The correlated curriculum, if you want -- tell me when to go ahead, your Honor -- the correlated curriculum reached for the youngster who really did not have college potential as it could be discovered but was designed to see if we could uncover areas of interest in the -- in an area called career education which by the way I think was very far-seeing because the Commissioner of Education eventually, when he came into office, the present gentleman, developed a national program of careers education.

Now, these youngsters in the correlated curriculum were interested in a variety of areas such as health careers and others and their leanings were geared to attempt to provide them with skills so that they could have marketable skills when they graduated from school.

The received special teaching positions, as you can see, this was an overall allocation over and above, to correlate these positions to provide the additional services that were

required, and we maintained a central unit which supported these two programs by supervision and provision of materials.

THE COURT: Well, I am not sure that I understand the first of the divisions. That was pre-technical?

THE WITNESS: Yes.

THE COURT: And yes it did result in their going into --

THE WITNESS: That's right.

THE COURT: -- college training?

THE WITNESS: That's right.

THE COURT: Of what sort?

THE WITNESS: Well, many of them would --

THE COURT: Becuase I take it it's distinguished from ordinary college-bound prep school type training, --

THE WITNESS: Exactly.

THE COURT: -- in the familiar disciplines.

THE WITNESS: That's true. They would have wound up in many cases in the associate technical careers offered by the community colleges, where they would become technicians at the end of the two-year college program,

and therefore would be more highly sckilled than if they would go into the labor market with nothing.

However, since the community colleges have a transfer program, if they continued to show growth, they could continue to go to college and get their degrees in the individual --

THE COURT: But the idea of the program is to provide at least a minimum of academic training along with the pre-technical training.

THE WITNESS: It also was an attempt to see if by approaching it through a problem situation of a shop nature that their interest in education would be accelerated.

THE COURT: Well, to dismiss the word shop from the discussion for the moment --

TH E WITNESS: Yes.

THE COURT: -- because that just calls up recollections in everybody's mind of things that never worked, I take it here you are talking about all the more modern approach of internship, people from the outside coming in.

THE WITNESS: And for example if you were in a science class and had to design a piece

of machinery at that point you would bring in the mathematics class, the shop class itself where the machinery, the item would be created, the English class, where the associated reading had to be done, so that you had a core program focusseing on a problem originating in most cases from a science class spel'ed out in a shop class where it would be created, but all of the associated activity in learning would be there the idea had originated in Richmond, California at one point, and the gentleman who originated it is now the president of one of our colleges right here in the East.

(Continued on the next page.)

Q Can you describe --

THE COURT: Now, then the second aspect of the program, locating career interests with a view to implants of marketable skills so that the student would have someplace to go on graduation, what would that be like, more comparable to commercial high schools that taught specific skills like typing and stenography and cooking?

THE WITNESS: Yes. I think, however, that the attempt here is to give it much sharper focus. The ninth and tenth years of the youngster would be spent in general education and in the eleventh year he would begin to focus in -- for example, if you take health careers it might take in an area like practical nursing with all of the associated needs with that, which would then be taught. And at that point also the general educational patterns would begin to become part of the general training in the specific area.

It is a much more structured and much more pointed program and there would be field experiences connected with it so that someof

the youngsters would be able in their senior year, for example, to work one week in an area associated with the area that they are training to learn about, and a week in school so that you provide for a youngster in the health careers, for example, spending let us say a week on the job as a dental assistant and returning to the school for a week of instruction, being paid on the job, I might add.

THE COURT: You emphasized health. The health field --

THE WITNESS: That's the one I picked out. That's one of four.

THE COURT: What are the other sources?

THE WITNESS: Well, there is the -- the one which would be the business careers, the -- that you have described for us a little while ago, and I would have a little difficulty at this moment describing what the two others are.

I know there was an attempt by the people to expand the areas, to find areas where there was need and to build them as career areas.

THE COURT: Not in the inevitable data processing, I suppose.

THE WITNESS: Not at this point, no.

THE COURT: But bookkeeping or in business skills of some sort?

THE WITNESS: That's right, office skills, yes.

I would have to refresh myself on what the other areas are.

Q The next program is the school for employment.

THE COURT: Let's see, now this is again an overlay.

THE WITNESS: Yes, sir, these are additional positions provided for the school.

Q Could you describe the school's employment program?

A Yes. This was a program originally developed under state auspices over and above the regular tax levy moneys, which was an attempt once again to bridge the gap between school and work. I think we have all be troubled by the fact that very frequently youngsters would leave high school at whatever stage it was and go into nothing, a hiatus and therefore building bridges is an important component in providing for the needs of young people. This

particular program provided staff so that a youngster would be able to spend half his day in school and half a day on the job under supervision.

Eventually the state withdrew its funding in this case. It went to a half funding and then no funding. But we continued the program on a limited basis out of tax levy money, maintaining one coordinating person in headquarters to provide the overall operation.

Q And the next program, the cooperative education program, can you describe that?

A Yes. The proper education program is designed to provide a week of work experience and a week of education alternatively.

THE COURT: What was that one now?

THE WITNESS: Cooperative education.

THE COURT: Oh.

THE WITNESS: Two young people hold one job so that the job is covered at all times. But they are in the employment one week in and one week out. Much of this employment is provided in the various city agencies, and a number of them are provided also in business areas, particularly in the department store section. It has been a very successful program.

THE COURT: Now that would be alternate weeks.

THE WITNESS: That's right. In other words, the job is kept constant --

THE COURT: But here each of -- I mean you would have paired students.

THE WITNESS: That's right.

THE COURT: And would they normally be sharing the same job and the same curriculum?

THE WITNESS: Yes.

THE COURT: I mean one would cover the job one week and another the next week and then in the alternate period they would have the same class room assignments of one or another sort, so that they would just be like pieces of wire spinning.

THE WITNESS: The teaching positions provides and you can recognize this calls for a considerable amount of coordination with the school -- and the teacher does two-fold things: He personally finds the young people, sees that they are programmed and also does incidentally some guidance, which is a necessary component.

THE COURT: Now this would require, I

take it, pretty careful phasing of the pattern of instruction, wouldn't it? And that has 204 additional teaching positions city-wide?

THE WITNESS: That's right. There is a central office staff which of course must generate the jobs and provide the support.

Q These programs do not appear in all the high schools, needless to say.

A No. There is a two-fold factor, there is one, a factor of need and secondly the high schools involved would want todbtain these programs and application for them.

Q In other words, an individual high school would have to show an interest in this or in other possible programs?

A Yes. If we're talking now about school to employment and co-op education yes. It would not be true for example where you are making allocations according to educational need.

In other words --

THE COURT: In other words, the group 8 ones.

THE WITNESS: That's right.

Q Now on Friday Dr. Scribner was testifying and he said in part that we should be trying to emphasize or to recognize the fact that youngsters learn from life and

from actual work experience as much as they do in the classroom. Would you say that some of these programs are an effort to give concrete meaning to that type of thought?

A Indeed. I would say so. I think you would be interested to know I am a member of the National Committee on Secretary Education, which is Conant's committee, and has quite close contact with the White House.

We had a session in Washington just this past month and our pgoram was one which was looking for action learning. In other words, learning exactly along these lines. Our gruop was addressed at that particular point by Dr. Sidney Marland, who has now become the assistant secretary for education in HEW, and this is the nature of the thrust on the cutting edge of education at this present time.

I think it is -- it is the area if we watch it closely where much of the effort and thinking is going in increasingly along that line.

Q Now, go to number nine and I will just read the introductory paragraph and I would like you to explain the particular problem involved there, and solution: The Board of Education has introduced the policy of establishing a maximum of seven periods of instruction for students in all high schools except where mandated programs

require additional daily instruction.

The teachers made available, used for the following purposes,"and then A, to reduce classes' sizes in all schools, about to provide additional teachers, increase the number of periods of instruction daily for each pupil in those schools which fell below the city-wide average.

The intent is to encourage students to remain in school and to enrich their educational programs above the minimum required for graduation. 132 positions were used to reduce class size and 85 positions were used to provide additional instruction in those schools which fell below the city-wide average."

A We as you know, are ir a budget crunch. The question therefore was how can you make additional provision without any influx of money. The Board of Education therefore decided that it would set a ceiling on the amount of instruction that any one youngster can take.

Now, there are schools, for example, where youngsters will be taking eight and nine and even ten classes in the course of a year -- for example, music and art, performing arts. Also in the vocational schools routinely the youngsters were carrying more than seven periods of instruction. It was generally eight. They were in school for a nine-period day. This meant a very acute reshuffal in

many cases. Great protest on the part of some young people and their parents and communities because there was a restriction of education opportunities being offered.

Nevertheless this program, this policy was adhered to and the positions that we therefore recaptured were redistributed on two bases. One of them was generally to attempt to reduce that 31.5 figure for the city as a whole to a smaller figure of class size. And the other was to say to schools -- I would have to give you a little background here: In the senior high schools as against the junior high schools and the elementary schools, the number of classes of instruction taken by the youngsters are not uniform, they vary from anywhere from five as an average to sometimes nine and ten in some cases. In some instances, for example, a school will average out at five. In another one at eight plus. Therefore, to get the schools where the youngsters were getting -- were taking fewer classes, these schools were given additional positions specifically to encourage the youngsters to take more classes of instruction.

THE COURT: Now how did that work?

I mean that would be to lengthen there school day?

THE WITNESS: Exactly.

THE COURT: Or to shorten the periods of instruction?

THE WITNESS: To lengthen, to increase the number of periods of instruction in those schools which were below the city average.

And therefore I required of the schools that they tell me exactly how they were providing these positions and how they were going to use them to increase the number of classes to be taken by the extra youngsters. So they provided us with a breakdown of exactly how these were being used to increase beyond the number presently taken by the youngsters the number of periods of instruction. It was an attempt therefore to enrich the education program of these schools.

Q So presumably any school or most schools where the students were taking a low average number of classes would profit in part from some of these additional positions released by these changes?

A Yes, in some cases as many as five positions.

THE COURT: As many?

THE WITNESS: As many as five positions in some cases.

Q So to an individual school?

A To an individual school.

Q In other words, 85 positions were used -- I am reading now -- "were used to provide additional periods of instruction in those schools which fell below the city-wide average."

A That's right.

Q So those 85 would be distributed throughout the high schools with low average sub-periods and some of those high schools may receive as many as five --

A That's right.

Q --of that number?

A That number was very small. It was an attempt to do something to encourage the schools to provide more instruction.

Q I direct your attention now to the next broad subject --

THE COURT: Let's -- I mean as I recall in my time we had really five working subjects a day, all of which of course were accompanied by home assignment, homework assignment, which required preparation for class. I am thinking of seventh, eighth on, classes and wondering how people -- we thought we were working pretty hard -- how you people are expected

to prepare seven or eight classes a day, or does this indicate a shift to classroom teaching as distinguished from a division of learning by excavation at home and being taught at class?

THE WITNESS:: What you were taking at that time were five major subjects, yes, but you were taking in addition things like health education and music and art. All of these are lumped into --

THE COURT: Yes, most of which required no preparation.

THE WITNESS: That's right.

THE COURT: -- Such as physics, or in art only occasionally -- I don't know about people who are taking mechanical drawing and things of that sort, I expect they have real work assignments. And music nothing, I suppose you were supposed to read your notebooks.

THE WITNESS: And sing in class once in a while, yes.

The attempt here is not to distinguish between those helpful prepared subjects and the others, but to say that all instruction is

included in this particular category. So that your five would have added up to six or seven or eight depending on how many other minor so-called subjects you were taking at that point. This refers only to the total.

There it does not mean that every school has a minimum -- I think the average runs about 6 point something. It does not mean that these are all major subjects, it means all of the subjects that they are taking.

(Continued on the next page.)

Q Dr. Zack, if I could address your attention --

A Yes.

Q -- to page six, Roman numberal 6 for a moment, a page back, I think it might explain, the very top paragraph.

A Yes. That's right. It would include typing, it would include many other subjects that we would normally not regard as major preparation.

Q This total figure includes all the courses taken including required music and health education and subjects of that kind?

A That's right. And you see when we talk about cutting back from -- to seven in the vocational schools, for example, youngsters routinely were taking four periods of shop and four periods of academic work. That added up to eight even though the shop classes obviously did not carry much of a homework assignment, as his Honor has pointed out.

Q Now, if we may go on to the next category.

The first one was basic teaching allotments, which is what we have been discussing thus far. The second braod category, B, is guidance services, and I would like to direct your attention to the first paragraph, which I will read.

It states "For guidance services positions

including those of the licensed guidance counselors are allotted as follows: A, one for every 390 pupils retarded two years or more in reading, B, one for every 460 of the remaining pupils, C, a minimum allowance of 3.5 per school."

Now, could you explain what we mean when we talk about guidance services?

A There are licensed guidance counselors who devote themselves full-time to young -- to counselling young people in the areas that require counselling. There are other categories of assistants to youngsters which are guidance in nature, but do not have licensed guidance counselors performing those services, for example, grade advisors with which his Honor would be familiar. These are people who give education guidance in the programs that you are going to take and assist for example in the program for those purposes.

People, for example, in offices like attendants, where you're providing a service for youngsters, in some cases deans, who also fulfill a guidance rather than a punishment function in our thinking these days. All of the services that would fall into these categories of serving young people on a guidance level, an assistance level, are part of the package of guidance services. It extends therefore far beyond the merely licensed guidance services as we normally conceive of them.

Q So the total number of licensed guidance teachers or counselors in a school would actually reflect perhaps only a small percentage of the total complexion of guidance services.

A I would think so.

Q And these other guidance personnel are -- are they people who devote a substantial amount of their time to the guidance service?

A Yes, yes. It may be anywhere from, let us say, an administrative period, which is practically this term, to release from teaching in order to do it. Anywhere from one to three periods in the course of the day.

Q Now could you explain then how this formula works?

A Yes.

Q I think it's perhaps self-explanatory but just to elaborate.

A Once again, the need here is to recognize the need of youngsters and the best measure we have of deprivation is the reading grade. And therefore using that as your target approach we provide more counselors per capita for those who are retarded in reading knowing that there were attendant problems, than for the general run of the population, the difference being the factor of 390 as against

460.

Now, you use the minimum allowance of 3.5 because no matter how small the school is certain functions must be maintained, attendance, for example, or other things of that nature. So therefore a small figure was set even though on the surface it would appear that you ought to follow strictly on the number of youngsters in a particular school.

Q Looking at these total number of programs and the total number of -- the total number of methods of strict resources it would appear,would it not, that we have special allocations that are made within the most basic tax levy formula, additional special allocation which are made also from tax levy funds above and beyond the basic formula, and still additional allocations which are made out of reimbursible funds?

A That's right.

Q All to help schools with perhaps a larger number of students with retarded reading and with other problems?

A Yes.

Q Could you perhaps tell us how recently was this formula adopted?

A It was adopted in 1971, I think September '71 was

the first time we introduced it.

Q And before that I would assume that although it might not have been in formula context, --

A Yes.

Q -- there were special ways of giving added help to schools that needed it. Was there opposition to the adoption of formulas which gave this additional help to certain schools?

A This is a philosphic problem with which we were presented. Prior to that time there was a great deal of -- great -- great deal of leeway for example, by a person like myself in trying to meet the needs of particular schools, so that you might make special allocation for a school which did not necessarily result in a strictly formula approach, because you perceived the needs and therefore the superintendants in the field had more opposition as to what they could do. The thought here was to reduce it to formula so that nobody could claim that there was any kind of favoritism. And therefore we had to spell out the basis for special allocation which would be uniform throughout the city. We moved to the formula approach because the public appeared to be demanding it.

Q At this point I would like to move on to the method by which these various criteria and formulas are actually applied to the individual school that we're

concerned with her, Franklin Lane, as compared to other schools of similar problems and as compared to the city-wide average, where we have those figures.

Now, as you are aware this profile has chosen certain indices for expressing the result of the application of those allocations and one of them is entitled, "The ratio of pupils to teacher per subject period."

Now before we go on, on page 6 you will find actually a definition -- page Roman number six, next to last paragraph.

A On page six?

Q Roman number.

A Roman six.

Q Right.

A This is Benjamin Franklin. Am I on the right page? Oh, I see. Thank you.

Q I would like you to tell us what the formula is and its significance?

A Yes. There is an overall allocation according to needs, caccording to the register of the school and the curriculum index so-called, which was the number of people -- periods of instruction that a youngster is taking. That is not as descriptive, for example, as the actual ratio of teachers per subject period, from which you could discover

how many youngsters were in a subject class itself for instructional purposes.

We therefore developed the second one because it was more explicit and more descriptive of what the actual situation was in the instruction of the inmate.

Q I direct your attention page 67. Page 66 and 67 provide a description of Franklin Lane High School on page 67, approximately in the middle. I believe we have the ratio of pupils to teachers for the subject period for the 70'71 year as it applies to Franklin Lane and over on the right-hand side we have the day academic high school city-wide average, and could you tell us how these figures relate to each other?

A I"m not sure that I follow your question.

Q In other words, if we look at the Lane figures, under tax levy and reimbursible what is the ratio of pupils to teachers per subject period on page 67?

A Well, the allocation under tax levy --

Q Under the tax levy and reimbursible.

A Yes.

Q I believe the figure appears 23.3.

A Yes.

Q Is the ratio --

A Oh, I see. You're down at that level, yes, that

is right, that's right.

Q And what's the city-wide average?

A Twenty-five.

Q Now, would some of the programs and some of the allocation formulas as we have been talking about account for the difference here?

A They would. Mind you now, this is against the practice as well as -- as non-deprived population, so that therefore you have a city-wide average which covers the population in general and this is distinctly and significantly within the lower.

Q I believe there is a further index that uses some of the very same variables that we have been discussing until now that is called the cost per subject period.

A Yes.

Q And I would like to direct your attention to page 196 and 197.

THE COURT: What was that?

MR. GOPSTEIN: Page 196 and 197.

A Well, that would have been to be seen in relationship to the first two columns, where you have a total allocation of moneys out of tax levy and then tax levy and reimbursible per capita. It would appear under those circumstances that some of the schools come out quite low as against

others which come out fairly high.

Q Now, could you look at page 197, the very last line, which gives the city-wide average.

A Yes.

Q And under "cost per subject period for tax levy and reimbursible" what's city-wide average?

THE COURT: Now wait, let's look at the headings together because they are a little bit cabalistic.

The first column is total P.S. over OTPS. What's that?

THE WITNESS: Well, personal service. That P.S. is personal services. That's the staffing of the school, the cost of the staffing. OTPS is the other personal services. That would include supplies and equipment. Of that nature.

THE COURT: Well now wait, then it isn't -- really it's just total personal services, or what is it anyway?

THE WITNESS: That's right.

THE COURT: It's not a ratio?

THE WITNESS: No, not at that point.

THE COURT: Or a fraction?

THE WITNESS: Not at that point. It's --

Q Is that -- Dr. Zack, is that number in the first two columns the one which later is divided by the average subject periods?

A That's right.

Q -- To get the cost per subject period?

A Exactly.

Q Now, since that number is one of the basic elements in the equation is it true that a school which has perhaps a lower average teacher salary or perhaps a lower average number of classes taken would show a lower expenditure?

A That's right.

Q And then we take that number and divide it by the average number of subject periods to get the cost per subject period?

A That gives you a much more realistic picture of how the money is actually expended.

Q And the city-wide average for cost per subject period of tax levy -- reimbursible -- this is at the bottom of page 197.

A Yes.

Q What's the city-wide average?

A The city-wide average for both is $135.

Q And Franklin Lane?

A $139. That would be four dollars above the city average.

Q Above?

A Yes.

Q And I believe it's also above for the tax levy figure alone.

A Yes, it is by two dollars.

THE COURT: Now, wait a minute.

This is the cost per subject period.

THE WITNESS: That's right, of instruction.

THE COURT: And that's 127 as against 129.

THE WITNESS: Right.

MR. GOPSTEIN: For tax levy.

THE COURT: And 135 as against 139.

THE WITNESS: That's right.

THE COURT: And 23.3 as against 25, we we know fromthe earlier table.

Q Now you spoke earlier of the difference in the guidance services which are provided to the school, and I would now like to direct you to page 202 and actually page 220 continues on 204. I believe page 203 puts in vocational statistics.

A Yes.

Q Now there is a ratio there that is entitled "Ratio of Pupils per against service positions." Now could you tell us first looking at page 204 on the last line, what the city-wide average of this ratio is for academic high schools?

A 15.1.

Q That would be the positions. Actually I mean the last figure there.

A Yes.

Q The one, 2.20 figure I believe.

THE COURT: What page is this?

MR. GOPSTEIN: This is page 204.

If your Honor will notice, I believe there was a mistake here. Page 202 begins the academic high schools in the city and they continue on page 204 and somehow on page 203 the vocational guidance services is stuck in there.

THE COURT: This 204 is really Appendix B continued from page 202.

THE WITNESS: That's right.

MR. GOPSTEIN: Yes.

THE COURT: let me mark it.

All right, now the ratio of --

MR. GOPSTEIN: The ratio of pupils per

guidance service positions.

Q Now, you have already explained to us that the guidance service positions includes more than just the licensed guidance teacher but other guidance personell and on page 204 we have the city-wide average of that ratio and what is that?

A 15.1.

Q And again I direct your attention to the last column on 204, the one that says 220.

A Yes.

Q I believe that's the ratio of pupils per guidance service position?

A That's true.

Q Now what's the same ratio at Franklin Lane High School looking back at page 202?

A 151.

Q 151 would seem to be substantially lower than the city-wide average.

A It is.

Q I believe also it's the lowest ratio in all of the Brooklyn academic high schools.

A Yes. It's interesting to put along side Brooklyn Tech or Lafeyette.

Q In other words, in Brooklyn Tech what's the

figure there?

A 368.

Q 368. It would appear, would it not, that even some of the other schools around Franklin Lane, that the testimony has shown of a high percentage of blacks and Puerto Ricans, and presumably a high percentage of students with reading problems, that these other schools have ratios that are higher--

A Yes.

Q -- than Franklin Lane, for example Thomas Jefferson.

A Yes.

Q That seems to have 158.

A That's right.

Q Or Bushwick 154.

A That's true.

Q And Eastern District 163.

A Yes.

Q Boys' 152.

A Yes.

Q These are all schools that have been mentioned in prior testimony.

A Yes.

MR. GOPSTEIN: Could I have this marked

for identification.

THE CLERK: Defendant's Exhibit B for identification.

THE COURT: Do these numbers that are given in the Arabic numbered pages in the various tables reflect what actually was done during the academic year 1970-71?

THE WITNESS: That's right.

MR. GOPSTEIN: I would a ike to have --

THE COURT: Just a momen . School profiles has not been marked in evidence.

MR. GOPSTEIN: I would like to mark it in evidence now.

MR. TODELL: No objection.

MR. GOPSTEIN: I guess we'll take this copy.

THE CLERK: Defendant's Exhibit A for identification.

THE COURT: Now received as Defendant's Exhibit A. Would you mark the label.

MR. GOPSTEIN: I don't know, we might have had another copy.

THE COURT: Oh, I have it here I guess.

THE WITNESS: Your Honor has one that

seemed to be marked.

THE COURT: You have no -- knock out the "id" and put in an "ef."

Exhibit B is --

MR. GOPSTEIN: Exhibit B.

THE COURT: Experience index.

Q Could you tell us, Doctor, what these particular set of figures indicate?

A It is entitled-- I will just read this -- it's dated April 10th, 1972 and it's "Experience Index Academic High Schools," and I am addressing your attention to the percentage of teachers five or more years experience.

One of the indices supposedly of the effectiveness of the faculty is the experience that the faculty ultimately has had. In this particular case a study was made of the Title 1 schools, and as you will see by the figures given the percentage of teachers at Franklin Lane who had at that point five years or more experience ran to 70%. That would be a figure to be compared with the other Title 1 schools in the Borough of Brooklyn which you can see in the same column.

Q And could you turn to page two of that exhibit. And I believe on the right-hand column the third line from the bottom would give us the average for

the Brooklyn Title 1 Schools?

A That' right.

Q Which is what?

A 63.24.

Q IN other words, in this particular index we are measuring teacher experience using the five year cut-off point?

A That's right.

Q As compared presumably to other schools of similar problems to Franklin Lane.

And again it would appear that some of the same schools that I asked you before to compare in regard to guidance services are also the ones that are included in Title 1 schools.

A True.

Q Such as Bushwick, Eastern District, Jefferson, Boys' and others.

A That's true.

THE COURT: We will take a brief recess.

(Recess taken.)

(Continued on the next page.)

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MR. GOPSTEIN: I would like Exhibit B marked in evidence. I don't believe it has.

MR. TODEL: No objection, your Honor.

THE CLERK: Now Defendant's Exhibit B in Evidence.

THE COURT: I was wondering what some of these headings mean? What does the totals at the top of page one mean? Oh, total teachers, I take it?

THE WITNESS: Yes.

THE COURT: Total teachers having five or more years experience, and then the percentage which one is of the other. Then District 78 T-1, MT-1?

THE WITNESS: You've got me, your Honor. There is a point at which the computer beats me. I'm not sure that I know.

District 78 is the designation given to all of the senior high schools. I'm not sure about the totals --

THE COURT: Then the Bronx total is 74.8 T-1, T-2, whatever that means, of 73.57.

Then the numbers given from the Brooklyn

high schools, are those all Title One high schools?

THE WITNESS: The ones that are listed here are Title Ones. The ones that have been printed out are Title One.

Title One schools have been difficult to define, but the latest attempted formulation of what is a Title One school is to strike the average of those who are identifiable as deprived throughout the City high schools. That percentage was hit at about 36 percent, I think, the last time around. A school that is over that total is described as a Title One school.

Therefore the ones for which figures are provided here are designated as Title One schools. The others, the figures are not provided because they don't fit the category.

Q And the formula for then determining deprivation would be included in the Federal guidelines --

A That's right.

Q -- would it not?

This would be different from, for example, the index of reading retardation we talked about before, these would be other economic factors?

A Yes, yes.

THE COURT: This is by the use of the formula which determines whether or not Title One funds are forthcoming?

THE WITNESS: That's right. And the limitations are becoming increasingly severe, so that this present year we almost face the fact that any school which did not become designated as a Title One school is going to receive no Title One monies.

We have protested that rather bitterly because there are a number of schools which have Title One youngsters eligible but do not constitute a sufficient number to be able to make that school a Title One school, and suddenly a school which is getting very little is going to get less for the youngsters who have need.

There has been a temporary break in that sequence by allowing the money to follow youngsters who are Title One-eligible into their schools if they have done it by choice, by -- by their own option. If they are allocated to the school -- and this is an interesting difference -- if they are put into the school by designation --

for example, if they are in an enclave they are not considered to have gone to that school voluntarily, and therefore the money does not follow them.

We did not understand the logic of this, but we are bound by the guidelines and have to conform. It has interesting implications.

Q In other words, the guidelines have attempted to limit or concentrate Title One funds in those schools with a higher concentration --

A Than the City average.

Q (continuing) -- of deprived youngsters?

A That's right.

Q Now I ask you to turn the profile to page 66.

THE COURT: Now, Exhibit B was offered and received?

MR. TODEL: Yes, I had no objection.

THE COURT: What was the page?

MR. GOPSTEIN: 66.

Q And I direct your attention -- this page again is on the description of Franklin K. Lane -- I draw your atttention to the bottom of the page, which is entitled "Special Programs," and there are there listed a variety of special programs, and could you preliminarily indicate to us

with respect to these programs, in regard to which -- you've testified in regard to some of them, perhaps not to others -- whether these programs come from tax levy or reimbursable, or a combination of them.

A It would be a combination. Not that the monies are comingled, you understand, but those which are Title One which are education funds which are the State's parallel to Title One, and others, which come out of tax levy. For example, College Bound would be a Title One program.

Co-operative education is tax levy, pre-technical is tax levy. School employment is tax levy.

THE COURT: Upward mobility was Title One. Homework Helpers and contact and high school redirection would be either one or the other, as is true for auxilliary services.

Remedial reading would be -- would be tax levy, and TESL would be either.

Q Could you tell us what the letters stand for?

A Teachers of English as a Second Language.

Q That would be to help Puerto Rican students?

A Chiefly, yes, although technically anyone who is deprived in terms of language facility.

But the biggest figure in the City would be of

Puerto Rican background, Spanish-speaking.

THE COURT: Is there any implication of what percentage of children counted as Puerto Rican in these various censuses are in need of or are recipients of second language instruction?

THE WITNESS: I think we could capture those figures for you, your Honor, and I know I had them at one point, when I was testifying for the U.S. Commission on Human Rights which you remember met in New York City rather disasterously.

They could be recaptured, but I couldn't give them to you off the top of my head. I don't know. It would be a significant percentage, I'm sure.

THE COURT: You mean it would be a large percentage?

THE WITNESS: It would be very significant, yes, I would think so.

Q Doctor Zack, from your knowledge of the special services or special programs that are provided at various high schools, what would your evaluation be of the total number of programs available at Franklin K. lane --

A Exceptionally --

Q (continuing) more, less?

A They are exceptionally high, I would say.

Q And this would be exceptionally high in comparison to other school so far of similar ethnic background and similar problems?

A I think it would be high, yes. I -- this is just a -- a quick glance, but I think it would be comparatively high.

And the factor here would be an indication of response to need, I think. There is competition that particularly for many of these programs, the money is limited and therefore, although a school may be a Title One school it does not automatically receive Title One funds.

The allocations here would be made in a -- in a form which I could describe, if you are interested in hearing it, but it would be made on the basis of a proceeded particular need, so that although many people would ask let us say for school home contact, not all the schools would get them, even though they would be Title One schools. Same thing would be true for College Bound, for example.

Q In other words, we are taking a very limited pie and trying to slice it in a variety of ways, and Franklin K. Lane -- I think there has been testimony -- now

Q (continuing) -- by Mr. Anchor, I believe, that he felt that perhaps there were nine or at least ten other high schools in the City that he could name with comparable difficulties, and his feeling, I believe, was that the Lane Programs, even considering all things being equal, they are beyond those of the other schools?

A Yes, I think that's true.

Q Now I'd like to ask you about the utilization of buildings. We have had evidence introduced already that, indicates, I think, that the current utilization factor for Lane for 1972 is 111 percent, and I believe you are familiar with the figures generally for the past few years, which are also in evidence. Now, is 111 percent an average figure for utilization in a school like Lane?

A It's low by comparison with others on a City wide basis.

Q Now, is Lane to your knowledge currently on a single session or an overlapping or an end to end session?

A It was my impression that it's on single session, although there may be some modifications for a small number of youngsters.

Q If you as an educator were given all the resources that you needed, which of course is never the case, but if you were, would you say that it would be

preferable to give a single session to every school.

A Unquestionably. I think young people rise with the sun and they should learn with the sun, and they should set with the sun. In getting them started in education at a point where they have spent half of their day already before they get to school, I regard as an unfortunate development.

However, in view of the compulsions of space we have to adopt programs which from my point of view personally I don't think are the best or optimum educational situations.

Q Do we have many high schools that are on single session in the City of New York?

A Comparatively few.

Q Very few. And are most on overlapping or on end to end session?

A That's right.

Q In order to receive a single session isn't it necessary to reduce the enrollment of the school?

A Yes.

Q Now, evidence has been introduced from the official ethnic statistics, which include also utilizations statistics that indicate that Franklin K. Lane high school in 1968 had a utilization of 125 percent, and that has gone down, perhaps with slight variation, but it has gone down in that period of time. Does that mean that the enrollment

of Lane was decreased?

A Yes.

THE COURT: Would --

Q Does it mean that the enrollment in Franklin K. Lane has been decreased?

A Yes.

Q And it has not been possible to do this for all schools, has it?

A No, sir, not at all.

Q In other words, we have many other schools whose utilization level right now is far higher than Lane?

A Much higher. It's as much as 160 percent in some cases.

Q And did the principal of Lane request in various forms at different times that he be given the opportunity to have single session?

A Yes, he and the faculty pressed very hard for it.

Q So in response to their request to have -- I presume you and the Board and other officials have reduced the enrollment of Lane, something which you say you have not been able to do for all other schools?

A Not at all. There is a school nearby which is 158 percent.

MR. TODEL: May we have the name of

the school?

THE WITNESS: Canarsie.

MR. TODEL: Pardon?

THE WITNESS: Canarsie. I think it's about 158 percent.

Q Have other schools with somewhat similar problems, taking into consideration budgetary limitations, tried to meet their problems by going into overlapping sessions?

MR. TODEL: If the Court pleases, I mean I've been allowing a great deal of leeway with reference to objection. "With similar problems." Now I'd like them to specify what schools have similar problems to Lane and I think -- I know Mr. Zack has been very helpful in giving us a broad aspect, but when he says, "similar problems," I will object to this question, your Honor.

THE COURT: Well, perhaps he can identify schools and whether or not they do use overlap or end-to-end sessions.

See at page 66 of defendant's Exhibit A it says that Lane operates on two overlapping sessions from 8:00 a.m. to 3:00 p.m. Is that

what we mean by single session?

THE WITNESS: It is my impression, your Honor, that Lane has managed to keep almost all of its students on a single session.

THE COURT: This, of course, as of 1970 --

THE WITNESS: Yes.

THE COURT: (continuing) -- session?

MR. GOPSTEIN: I believe Mr. Selub testified that currently he's on a single session. I believe that Mr. Selub has testified that currently Lane is on a single session.

Q Dr. Zack, I refer you in example perhaps to Eastern District High School.

A Yes.

Q And I show you the utilization statistics that have been introduced into evidence.

Now, would you consider Eastern District a school of roughly similar problems and similar student body?

A I [redacted] more deprived.

Q And what is the utilization rate there?

A In '72 it is 140 percent. In '71 it was 145 percent. It's ethnics are poorer in the sense that "others" are represented by a ratio of under 10 percent for '72

and 13.6 percent for '71.

Q And on page 58 of the profile, which describes Eastern District, is it indicated there --

THE COURT: What page?

MR. GOPSTEIN: 58, your Honor.

Q (continuing) -- that the school is on -- Would it appear that the school as of that year was on overlapping sessions or on single session?

A It was overlapping.

Q And with the utilization figure such as 140 or 150 would you presume that it is still on an overlapping session?

A Yes.

MR. TODEL: Objection, your Honor, to the form of that question because of "presumed to be overlapping."

THE COURT: Well, you see if we look at the comparable page for --

MR. TODEL: For Lane it's the same language which is used in Lane except the only addition is that there is an annex.

THE COURT: Essentially the same figure except for 10 minutes.

THE WITNESS: I would think, your Honor,

that the description giving -- given here of Lane would not apply to the present situation. I think that Lane -- I do believe -- is on a single session, and if there is any kind of overlapping it would be of a very small number of youngsters, which would not describe it as an overlapping session in truth.

I would say with regard to Eastern District that it is definitely overlapping sessions.

THE COURT: Well, didn't we have a definition, a determination of the utilization percentage here somewhere? I forget whether --

MR. TODEL: I think Mr. Anchor during the course of his testimony testified that it's the capacity of the school, the number of students, capacity or the number of seats possibly, that would be available, and then the number of students actually enrolled, and that is how they figure out the utilization rate.

THE WITNESS: I can help there, if I may, your Honor: The utilization factor is developed by taking the number of classrooms in a school and the number of available seats in those classrooms and then adding on

a percentage something in the neighborhood of 15 percent for other areas which are not conventional classrooms, like lunchrooms, gymnasiums, auditoria, and so forth. And this figure then become the utilization factor.

It makes a presumption that all of these areas will be used at a maximum. It does not allow, unfortunately, for some things which we tried to get City Hall to accept, but there are variations in the use of them in terms of numbers that will be in any one classroom.

But the utilization factor is applied uniformly to the high schools, and therefore we have a determination which is comparable up and down the line.

THE COURT: Well, let me ask this then, suppose that you had a school that when it was open was 100 percent utilized, every seat that was supposed to be occupied was occupied, and no others, and none of the other space was used for any purpose other than its designed use, and that the next year the population of this school was exactly doubled, and it's put on double or triple session, however, to take care of the

increased population; would that produce a 200 percent utilization?

THE WITNESS: Not actually, no. You'd probably have to go to triple session to get 200 percent.

THE COURT: Yes. Well, that's what I said.

THE WITNESS: Well, there are two ways of approaching it. One, in the overlap what you do is to pick up that portion of the day when youngsters are not in classrooms totally, when they go to lunchrooms, for example. At that point you would bring in other youngsters to fill those vacant seats so that you overlap your session in that particular way.

And you may have a series of overlaps because the vacancies in the classrooms are accelerated later in the day. Or you can do end-to-end session, in which you knock out in affect the lunch room period and you bring in one group that stays for six periods and goes home, and another group which comes and stays for an additional six periods and then goes home.

This is used in a number of schools which are very heavily overloaded and schools which may have had difficulties which tended in terms of disorder to concentrate in places like the lunchroom which are more difficult to patrol.

Therefore the end-to-end session had the added virtue from the standpoint of trying to stabilize the school of knocking out your trouble area from congregation. That is the lunch room. You'ver brought them in for six periods and then they could go home for lunch or they came after lunch and stayed til the end of the day with the exception of those youngsters who were on free lunch, and for them you made provision to be sure they would be fed in school. That was done in the intervening period.

So these are the number of devices that are used to accommodate yourself to overloading.

THE COURT: In an essential way it's an expression of the ratio of the optimum number of students using the school in single session according to the school design and the actual number of children in full attendance at the

school.

Q If you were to bring in many more students into Lane, considering its present population, would it become more difficult to maintain the same single session?

A I think it's at the point where it's almost impossible to do anything else. If you did any kind of increase in the population of Lane I think they would have to go on an extended session.

THE COURT: Have to go --

THE WITNESS: On extended session.

Q We have had testimony here by Mr. Anchor and to an extent by Dr. Scribner regarding the administration of Franklin K. Lane High School.

THE COURT: Some --

Q Regarding the administration of Franklin K. Lane High School and it's been expressed that there was a feeling that among the problems of the high school, among others that have been enumerated, was some weakness in some areas, perhaps, where things might have been shortened up in the administration of the school.

Now, based on your experience in the high school office would you concur with that feeling?

MR. TODEL: Objection, your Honor, to the form of that question. There was testimony

to the effect that there was something wrong with the administration but there were no specifics given by anyone, whether it's Mr. Anchor or Dr. Scribner, as to what was wrong with the administration of the school.

MR. GOPSTEIN: Well, that could be --

MR. TODEL: And if he wants specifics, I have no objection to asking what --

THE COURT: Well, that is not quite true, because I think the indication --

MR. TODEL: Except in one respect, your Honor: I believe it was testified that the leadership of the school is given the right to plan for programming and so on. Except for that one statement, I think the statement I made was accurate, your Honor. I may be wrong, but I think that was the testimony, that there was something wrong with the leadership, and when pressed with reference to what was going wrong, that they had the right to program or develop new programs, and nothing more than that I think was said, your Honor, with reference to the leadership.

THE COURT: Well, I think a good bit

was said on that subject.

MR. TODEL: Pardon?

THE COURT: A good deal was said on that subject.

MR. TODEL: With reference to --

THE COURT: I mean there was an intimation that there was a failure on the part of the Lane administration to seek at headquarters additional assistance that could have been sought on the basis of the development of programs suited to the population of the school, that the schools are not managed from the top but from the grass roots, and that the needs of the school have got to be appraised and assayed by the faculty and administration, and remedial measures developed there, which can be financed through, he says, demands made upon the board.

That at least was the picture that was sought to be outlined, as I understood it, and emphasis on leadership developing programs --

MR. GOPSTEIN: I believe also, your Honor --

THE COURT: (Continuing) -- on which additional guidance, etc., supplementary resources

could be organized.

You were saying --

MR. GOPSTEIN: I believe -- perhaps it's a restatement, but Mr. Anchor also stated that it had been necessary, been more necessary for him and the chancellor to meet and perhaps provide that guidance and surveillance to the administration of this school than it had in almost any other school, certainly schools of comparable difficulty.

(continued on the next page.)

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Q Now, I again address the question to you, Dr. Zack: From your knowledge of Lane would the statements be generally accurate?

A I would have to concur with them, yes.

Q Do you believe that Lane had, or the administration of Lane has used all the possible programs that they might have been qualified for?

A No.

Q We have had testimony with regard t things that they have and how much more the formula gives them, but do you believe that in developing their potential resources they have done all they could?

A No. For example, we set up an alternative school program in the high schools, which was designed to try to provide for those youngsters who were not succeeding or were not succeeding or were not being -- being compatible with the conventional form of instruction, another type of instruction. This program was developed, and all of the principals of the high schools were invited to participate if they wished.

The first session some 18 principals responded with interest, of whom some 13 indicated eventually that they were going to proceed. Twelve of them dii, but Franklin K. Lane, which was the thirteenth, did not.

That figure now has gone to 22 for this current year, because the program, I think is a rather successful one, and they get to be 25, but I don't think Lane is in it yet.

And another time I think in the effort to maintain a single session, programs -- some programs are more demanding of space and this would be true for example of the alternative program; in other words, you are going to take a group of youngsters, and they are going to group them in smaller groups, now, the alternative program eventually is going to go, if we can possibly obtain the funds from the City, into other settings than the school itself, but in the meantime those schools that were interested provided for them within their own buildings.

Some of them have managed thus far to get up to other facilities, but most of them are in the buildings currently.

Now, any program which begins by working with smaller groupings, for example, a college-bound program, which limits the size of classes by programatic design, places a strain upon a school's facilities in terms of classroom available space.

I do believe that Lane at one point was planning to knock out a number of these programs, perhaps even including the college-bound, if my recollection serves me,

because it might imperil the single session. I would regard those as choices that sometimes are not for the benefit of children.

Q Approximately what year would this be, what period of time are we talking about?

A I would talk about 1971, I think. '70 - '71.

Along the same line, if I may interject once, the positions are allocated to a school, and the manner in which they are utilized in the school is largely determined by the administration of the school. You will find that in Lane an exceptional number of positions are allocated to guidance, by comparison with any other school.

As you examine how that comes about, you will find that you make that number of teachers -- teachers available for these other services by reducing the number of classrcom periods of instruction given to youngsters, so that you relieve teachers. This would also be a component of the fight to maintain the single session.

Another one would be the willingness on the part of the faculty to accept larger classes than are scheduled -- for -- by contractual arrangement, in order once again to see that you don't get compelled to go into an extended session. It's a matter of judgment here, and one that could be questioned.

Zack - direct 80

Q To switch to a slightly different area, could you describe -- we've already had testimony by various witness with regard to the methods of administration of the high schools of New York at the top, and perhaps as a former assistant superintendent in charge of that division, could you perhaps again explain to us the divisions, the administrative divisions?

A Yes. Well, of course there is the chancellor, and since we are centralized, the administrative head, the supervisory head of the high schools is the chancellor of schools.

Under him of course, the deputy, and under him the deputy superintendent for instruction, to whom we respond.

The high school office itself consists of five, or did consist of five superintendents, who served particular areas in the City. And then the coordinating superintendent of the high schools, who is myself.

Now, each of these superintendents in the field has a number of high schools assigned to him for which he is directly responsible, but policy and problems if they are originating and affect the assistant superintendent, will very frequently come to me, and if they are of a policy-making nature of a substantial kind, in which the deputy chancellor should be involved, we in turn take them

to him.

I don't know if I responded to your question quite, counsellor.

Q For matters perhaps of convenience we have certain geographical distinctions, and what do the -- the assistant superintendents now cover which areas? It has been testified to. I'd just like you to review that again.

A There is one superintendent in charge of the Manhattan High Schools, another one the Bronx High Schools a third in charge of a portion of Brooklyn and Staten Island, still another in charge of the remainder of those in the area of Brooklyn, and one in Queens.

Interesting, when I was in the high school division, at one point back in the early sixties, my area was the Bronx and a piece of Brooklyn, including Boys High. At that time there was another person who became a member of the Board subsequently who was in charge of the Manhattan High Schools and Staten Island. So that this has shifted around.

Q And has then this related to zoning decisions and zoning procedures, the geographical distinctions between the high schools?

A Purely administrative. An attempt to equalize the amount of burden on each of the superintendents, so they

didn't give the best service in terms of --

Q I would like to direct your attention now to the zoning process itself. Could you try to describe for us the procedures that are used, which officers are involved in making zoning considerations, zoning changes and just give us an idea perhaps of the procedure that is involved, including the role of the high school office in the procedure.

A The schools -- the zoning patterns of the areas are re-examined every year. We have been evolving a procedure which has attempted increasingly to be responsive to community and parents and everybody else who has a concern about it, and have been changing our structured procedures to make it broader in its impact and involvement.

Generally, early in September you will have assembly at one point -- for example, at the present procedure, I do believe -- you will assemble the principals of the high schools, representatives of the districts affected, presidents of parents associations, and the problem that may exist at that particular point will be expounded for the group for -- for consideration.

Principals are generally asked to resemble those who are involved in their feeder patterns to examine it and make recommendations to the appropriate superintendent.

Involved in these procedures is the Office of Zoning which is the agency that provides the data, the information and the support.

Now, after this has been examined there are meetings held on a broken -- broken-down further, for example, meetings with -- with the members of -- presidents of the school boards, the community school boards, the district superintendents of the school boards with the principals separately, with the parents, for example, of the high schools concerned, presidents of the high school associations, parents of the feeder schools and others who may want to enter into the picture and indicate that they have a special interest. They will be heard.

We have meetings now with the elected officials in the area so that they can be apprised of the problems. Somewhere about November a first design is developed as to what will be the answers to the problem. These are reviewed by the deputy chancellor, not always by the chancellor at that particular stage, who will make further recommendations.

These are then brought back to the assembled group and exhibited to them, and corrections and recommendations and changes requested, and in some cases the whole plan will be overthrown if the response of the people is of

such a nature -- this happened in Manhattan last year.

A final plan is then drafted, which is submitted to the deputy chancellor and to the chancellor, and then it is presented as the final plan to the assembled groups in their various forms, in the group in large and any groups that feel they have a special interest and ought to be heard. That is the final plan.

This is then submitted to the Board of Education on a policy level. And the Board sets itself up as an appeals body, so that appeals may be taken from the plan to the Board of Ed itself, which will then rule on the a-peals and determine their justice or injustice.

The reachout is as intense as anything I know of being done in the Board of Education.

THE COURT: The what?

THE WITNESS: As intense as anything done --

THE COURT: The what is?

THE WITNESS: The reachout, the attempt to reach. It is an exhausting process, but justified by the fact that people feel they want to know and are informed.

There is no preconception of a plan, it is an attempt really to pool interests, pool

responses, and ... as -- as subject to change as common sense would require, and, with the appeals procedure, to be overruled as, as has happened in a number of cases where the Board of Ed itself has been able to make changes in the plans on its better judgment on the basis of appeals. It has done that in the Bronx, for example, just the last time around.

The agency --

MR. TODEL: If the Court please --

THE COURT: Yes?

MR. TODEL: (Continuing) -- I don't mind Mr. Zack continuing. May he continue, but may we have question and answer, really. I mean I have no objection -- Now he's going to go on to another thought, your Honor, and I would prefer that rather than him having a narrative, that at least we have it pinned down, without just a long narrative statement as to --

Q Yes, will you proceed. From your experience, then, would you say -- How would you evaluate the role that is given to actual listening to various community groups or anybody else that might be interested in the

possible zoning changes?

MR. TODEL: Objection to the form of that question.

THE COURT: I'm sorry, I didn't quite grasp the question.

Q I would just like to -- Dr. Zack has described some of the procedures in the zoning process, and I would just like him perhaps to make conclusion remarks as to the role that -- well, the degree to which various groups who are interested in zoning changes can make themselves heard in the zoning process, so that their views can be heard and considered.

A We have structured and are constantly changing it, and the changing in the structure is an attempt to be sure that if we have overlooked a group that has interest in it, that they have an avenue for being heard.

So the procedure, for example, as we first initiated it, is very different from what we are doing at present, and the thrust has been to bring in more people to be heard.

For example, when we first got started we thought that the problem was limited really to the schools, the high schools of the City, and also for example to the

parents of that school who represented the feeder schools originally from which they came.

We have expanded it to the parents and the presidents of the parents associations of feeder schools. We have expanded it, for example, to the people who are the elected officials from the area --

MR. TODEL: If the Court please, this is repetitious. I think Dr. Zack has stated, using his words, they have reached out to the wide area, and I think he has covered this already, and it's just a restatement of what he has already testified to.

There is no question that the Board has followed a particular procedure, and we are not questioning that with preference to --

THE COURT: Well, I have, and remember we have had a piece of paper here, which is going to be reviewed as to whether or not that was the mode of procedure, because I do attach some relative importance to exactly what was done.

I asked at an earlier stage whether, first, there were any statutory or other provisions that required hearings with respect

to zoning, and if so, hearings on notice to whom and then whether or not if there were no statutory or other requirements, the Board that had by regulation or otherwise systematically adopted noticed provisions and procedures in their regular staging of the procedures surrounding the redrafting of zone lines with opportunity for a hearing, and finally whether there was any indication that any of this was judicially reviewable in State Court under Article 78 or otherwise.

Now, as I had understood, at that point what appeared to be a two or three page multidraft of the typewritten paper was produced, and I think counsel were to look at it with a view to seeing whether that did present a faithful statement of the procedures involved, and what if anything counsel had to say about it.

MR. TODEL: That was Exhibit 2, I believe, your Honor, it was marked for identification I believe Exhibit 2.

All right, in view of what your Honor has stated. I thought actually the prior statement about Dr. Zack that he has said

more or less that he has gone through extended procedures to allow the community to become aware --

THE COURT: Yes, but you see that, as it is understood from this testimony, is accompanied by a degree of informality that makes it a matter of grace and not of duty or right, and that it is rather prudential than mandated. It's what people do if they don't want to get their buildings stormed, not what they do because they are trying to proceed by what you might call a structured due process method to determine something in which it is recognized that it is not an internal problem of administration but in part a community problem for the determination on notice and in accordance with standards, guidelines.

MR. TODEL: In view of your last statement, your Honor, I would have no objection if Dr. Zack would outline exactly what is done and what procedure has been set up specifically, and what rule or regulation has been mandated to do this particular outreach into the community.

I have no objection to that, your Honor.

MR. GOPSTEIN: I don't know if that was my question. It seems like cross-examination.

MR. TODEL: Well, no --

MR. GOPSTEIN: Your Honor, I say I don't believe that there is any -- I think I stated it last time -- any statutory requirement in the education law of the state that mandates --

THE COURT: Well, we also have the City charter.

MR. GOPSTEIN: Well, the City charter does not include provisions of the operation of the Board of Education, since it's --

THE COURT: I understand normally not.

MR. GOPSTEIN: Excuse me?

THE COURT: I say normally not, as I understand.

MR. GOPSTEIN: Well, I'm familar enough with the charter to know that such provisions are definitely not included in the charter.

THE COURT: Nor under any local law?

MR. GOPSTEIN: Nor under any local law that I'm aware of. I would presume that the only statutory provision which would govern this

would be the requirement that ultimate decisions of boards of education be made by a vote at a public meeting, and to that extent I presume --

THE COURT: So what does that mean?

MR. GOPSTEIN: Well, at the minimum --

THE COURT: Voted at a public meeting? You can have a vote from the Congress which I suppose is a vote from a public meeting, or a vote from the legislature, which is a public meeting.

MR. GOPSTEIN: Well, what it means --

THE COURT: It doesn't mean much from the point of view of hearing, because a public meeting is not a hearing. You can sit in the gallery of Congress or the State legislature or at a meeting of the City Council, but except as your inarticulate and orderly presence may indicate to the legislators that it might be wise for them if they wish to be returned to office to vote one way or another, there is nothing that you can do.

So public hearings just means that at least it's not done in the closet, but it is not a due process hearing.

MR. GOPSTEIN: I was pointing that out just to indicate that at a minimum what it would mean is that such a decision of the Board of Ed would be reviewable in an Article 78 proceeding.

THE COURT: I would say flatly no, because if all it is is a vote taken at a public meeting, it would be no more reviewable in an Article 78 proceeding than our case here today is. Simply because it's a public hearing. This is a public hearing.

MR. GOPSTEIN: But to the extent --

THE COURT: A public proceeding.

MR. GOPSTEIN: But to the extent, your Honor, that it's an administrative decision, it is reviewable.

Now, even if there was not the kind of record which your Honor is suggesting --

THE COURT: But there would be no record.

MR. GOPSTEIN: What I'm saying is that the Board would be required in Court to justify its decision, and if this did not meet the requirements of our --

THE COURT: I know of no such decision. I don't know of an Article 78 case on zoning.

MR. GOPSTEIN: Well, I would have to do further research on it. I know there was -- there was one case a couple of years ago, but the problem is really one of standing, because the people who are complaining, the Judge ruled in Brooklyn Supreme Court that they did not have the standing to bring up the particular kind of objection that they were bringing up to the 19 I believe 70--71 zoning plan.

(continued on the next page.)

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He did not say that this was not a reviewable issue, merely that these particular parents -- I believe they were parents -- did not have the standing.

THE COURT: Yes. Now, that's a quite separate thing. Whether or not zoning when carried out could be challengeable in law as in Baker against Carr or Reynolds against Simms or any other case involving redistricting of counties for the purpose of having elections for the governing board of the county, and so here I would assume that since there could be a million issues in zoning within a city, that those would be perfectly accessible -- and this case is typical of that -- to judicial scrutiny.

But what I am talking about is whether there is any integrated due process procedure such as for example a company's deciding whether a policeman will stay in his job or not, whether a liquor license will be granted or denied or revoked, or any ofthe other myriad administrative procedures: whether or not it would be like under the Federal Environmental Law -- and I expect soon we will have them under state law. There are

regular structured procedures that must be gone through, and at which a hearing and evidence taken at the hearing is a constituent part of the action ultimately taken, so that the action taken must respond to a record made. That appears not to be the case here at all, and that's what I want to be perfectly clear about, because if that be so then these opportunities for the community to voice a criticism or to introduce suggestions are, as I indicated before, matters of grace and prudence, and do not determine and are not constituent parts of the action which the board ultimately takes at a public meeting.

MR. GOLDSTEIN: I understand of course what your honor is saying. I would just point out that in the context of this proceeding that --

THE COURT: Well, to be completely frank about it, when you talk of getting, reaching out to the community and all the rest of it, any such unstructured informal ex gratia reaching out is more likely than not to produce response that is articulate, organized and determined in

the areas characterized by strongly organized middle class, well-educated populations armed to the teeth with idea and competency, and with the force to conduct argument effectively and persuasively, and that you are less likely to get youthful and articulate response almost in direct proportion to the ghetto-type and deprivation index of the area affected by the zoning.

If you tried to swap populations with, say, Grover Cleveland, I would venture to guess thatyou would get a great deal more concentrated-in-form, articulate response from the Grover Cleveland than fromthe Franklin K. Lane territory. And it is that response, community expression, which, rather than contribute a feeling of repose and confidence, is likely to index again areas of unsettled dispute and of leaves brushed over for another year. Do I make myself plain?

MR. GOFSTEIN: Yes, your honor. I would think that --

THE COURT: Well, that's what I'm interested in, and I would rather have it from Mr. Zack than from counsel.

THE WITNESS: Well, your honor, it is interesting, but some of the most forceful and pressing responses have come fromthe very communities that you have described as voiceless. I'm fully aware of that because I have had to respond to it in a number of places and cases.

For example there has been no reticence in speaking out for what is good for Boys High School on the part of that community.

THE COURT: There has been no --

THE WITNESS: No reticence about speaking out about what is good for Boys High School on the part of that community, or Eastern District, for that matter. Or Thomas Jefferson, for that matter. I think these schools have been more in the public eye, and certainly in our eye, in terms of what they feel or desire for their schools, than most of the schools. And I have been aware of that.

I can name, oh, a dozen high schools where the impact has been intense. For example you would assume thatthe borough of Manhattan, because it is deprived in such large measure,

would have very little vocality in these matters, but the zoning of Manhattan is perhaps more productive of discussion, and intense discussion, with the superintendent in charge of that area than any I can almost remember. And it actually succeeded in making substantial changes in the first proposals, to the point where they were completely reversed. An appeal which was taken successfully in the Bronx, for example, is in the area of Adlai Stevenson High School, which is a high school under considerable stress.

And I can tell you also that it's true that where particular -- particular groupings have felt -- in the middle class areas have felt agrieved, that they have spoken with great force as well, but I don't think they are the only ones who have that kind of force, and therefore the input of communities with regard to the zoning of schools is distinct and definite.

I can give you one example. For example the first time that we were trying to zone Brooklyn we made our arrangements. The next year we thought that we would provide a zone

for Boys High School, which had always been unzoned, and presented this idea. It had been suggested in a number of our hearings that the schools be zoned, all of them be zoned, and therefore we thought maybe we ought to try to zone Boys High School, and therefore we suggested a zone for Boys High School and for everybody in that zone.

And the president of that parents' association of Boys High School set us back on our heels with one of the most eloquent statements I ever heard, indicating in his judgment what was the idiocy of trying to create in the Boys High School facility a co-educational institution. He made it so clear. It was a forceful presentation by the Boys High community.

Now, we have made rather significant changes in areas affecting Eastern District, for example, because in this Puerto Rican community there was no lack of forceful presentation of the people. The fact of the matter is that they appeared more often at the Board of Education meetings, presenting their considerations for their school, than almost any group I can

remember in the City of New York.

I think it's encouraging. I think that our ghettos are finding voices. And I can tell you personally that I've heard them.

MR. GOFSTEIN: Your honor, at this point I was going to introduce certain maps. I'm certainly ready to go on, but I don't know. It's a different area, so I don't know if we should break now or later.

THE COURT: Do you want to break now until ten to two?

MR. GOFSTEIN: Yes, it's a slightly different area we are going into.

THE COURT: That will give you a chance to open the maps before we get back.

(Luncheon recess.)

(Continued on next page.)

THE CLERK: De Felice versus Board of Education.

MR. GOPSTEIN: I am not sure of the logistics of getting these maps up.

THE COURT: Maybe we can do it on tables until we get something.

MR. GOPSTEIN: Can we have these marked?

THE CLERK: Marked for identification, Defendant's Exhibit C through H.

. . . . . .

(Continued on next page.)

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J A C O B B. Z A C K, called as a witness, having been previously duly sworn, resumed the stand, was examined and testified further as follows:

DIRECT EXAMINATION (CONTINUED)

BY MR. GOPSTEIN:

Q I would like to show you this map, Defendant's Exhibit C for identification.

A This is a map of the zoning in the year '61-'62 for the high schools.

THE COURT: For Brooklyn high schools?

MR. TODFL: Yes.

THE COURT: You better do it one at a time.

Q Dr. Zack, would you just again --

A This is the high school zones for 1961 and 1962, Borough of Brooklyn.

Q It includes Franklin K. Lane zone?

A Yes, it does.

Q For clarification, explain what procedure we use in this little edition here to make the map complete?

A It's an attempt to show the Queens input as well -- into the zone of Franklin K. Lane -- unfortunately, the map that was used, was smaller in scale. You have to imagine that it goes down to that little green line.

THE COURT: So that easterly line has that curve in real life, but it extends from green line to green line.

MR. GOPSTEIN: This is merely compressed, the same area here (indicating).

THE COURT: That's the easterly extension.

THE WITNESS: Yes.

THE COURT: And Franklin K. Lane zone, would you put your finger on the map, describe its boundaries.

MR. GOPSTEIN: Just for the record. We have here in the west Sumner Avenue, and cutting east Fulton and down Utica.

The green borders are the outline for the high school.

THE COURT: And the red outlines are what?

THE WITNESS: It may have been the outline for the district, for the elementary and junior high schools, this is what I would assume; it seems to have no relevance, otherwise, in the map, but it would seem to indicate, for example, this area would have been District 21.

THE COURT: If you look at the basic legend, itself, Community School District --

THE WITNESS: Therefore, the red deals with another kind of organization.

MR. GOPSTEIN; Since the legend reads Community School District 1970 --

THE WITNFSS: The term Community School District did not exist at that time.

THE COURT: In '70?

THE WITNESS: In '62.

Q This was just prior to decentralization?

A It was about '70. It was just about decentralization. This would have been descriptive of the new -- this was broken up and it's now known as District 23. This section in here with the Ocean Hill-Brownsville -- which has impact on the Franklin K. Lane story.

MR. GOPSTEIN: I have been in Court for five weeks on these Canarsie cases.

The District of Franklin K. Lane as we see it, it extends into Queens does it not?

THE WITNESS: Yes, it does. That describes it.

THE COURT: It goes into Queens and it's westerly extension is where?

THE WITNESS: It appears to be Sumner Avenue.

THE COURT: Sumner Avenue and then comes on Fulton Street -- on Gates Avenue.

THE COURT: It goes as far as Sumner, then it comes back a little on Fulton Street, then it goes south again.

MR. GOPSTEIN: On Utica.

THE WITNESS: To St. Marks.

THE COURT: Now, it also extends down to Jamaica Bay.

THE WITNESS: Yes.

Q That was that, this is Defendant's Exhibit B, can you identify what this bank is?

THE COURT: It looks like essentially the same Franklin K. Lane District.

THE WITNESS: It would appear to be the same.

THE COURT: How far south does it go?

THE WITNESS: St. Marks Avenue and it continues with a very short jog on New York Avenue and then it goes on along Liberty and then drops down at Skank and cuts off.

THE COURT: It doesn't get over to Liberty Avenue?

THE WITNESS: Old Brownsville would be down in here, down this way (indicating). This would be Brownsville right here.

Q Dr. Zack, does the Queens area, the same in the '63 map, the previous map that we saw --

A Yes.

Q Franklin K. Lane had the same Queens Zone in '61, '62 and '63.

THE COURT: What is the line there?

THE WITNESS: Gates Avenue and it continues up Gates, turns down Bushwick and jogs up again to Evergreen Avenue and continues to Evergreen until it encompasses the cemetery.

Q Plaintiff's Exhibit A, could you please identify this map?

A This is a map of the high schools of Brooklyn, again for the years 1964-'65, including Franklin K. Lane.

We would now be following the yellow lines just to make it a little interesting, you know, and it would pretty much follow the same pattern as nearly as I can see, including once again, this area in Queens (indicating) with the same comments we had before.

THE COURT: It appears to be the same boundaries.

Q In other words, no change in the Queens boundaries?

A Nor the Brooklyn boundaries at this point.

Q Dr. Zack, Defendant's Exhibit F, could you identify this map?

A This is the map of the high school district in the year 1965-'66, for Brooklyn, once again, including Franklin K. Lane.

Q Is the Queens area any different than the previous maps?

A No, it isn't.

THE COURT: If there had been a change in the Brooklyn area?

MR. GOPSTEIN: I think we can see it in the overlays.

THE COURT: Do they pick up?

MR. GOPSTEIN: The others start --

THE WITNESS: I will just take a quick look. It pretty much follows the same pattern. Let's see, this is Sumner Avenue. I think it would appear to be following the same pattern.

Q And this is defendant's Exhibit G, could you identify this map?

A This is once again, the map of a zone for the high schools in Brooklyn, including Franklin K. Lane.

Q And is the Queens area the same?

A It is the same.

MR. TODEL: For Franklin K. Lane, it is the same.

THE WITNESS: Yes.

MR. TODEL: Grover Cleveland is different.

THE COURT: Label it where we could all see it.

Q This is defendant's Exhibit H, can you identify that?

A This is a map of the zones for the high schools in Brooklyn, and it includes the zone of Franklin K. Lane with its Queens area.

Q The Queens area, the easterly portion of the Lane zone appears to be the same as in the prior years.

A It appears to be the same,yes.

THE COURT: And the Brooklyn line is pretty much the same.

MR. TODEL: Yes, your Honor.

THE WITNESS: Pretty much the same.

MR. GOPSTEIN: May we have this marked for identification?

THE COURT: If you lift it up, I think there are lines on it, on the very bottom, but I am not sure. I think the drawn lines are 68 and are the three overlays, there, Mr. Zack.

THE WITNESS: Yes.

THE COURT: Then they are 69-70 and 71.

MR. GOPSTEIN: The legend is from --

The problem here may be that the eastern part is not spelled out.

THE COURT: No, that's the borough line.

MR. GOPSTEIN: This would have gone beyond this area.

THE COURT: And that doesn't show any easterly line bound.

MR. GOPSTEIN: This would be the small area added on to the map, would have to be added on to this area, in order --

THE COURT: Is Woodhaven Boulevard in Queens?

MR. GOPSTEIN: Yes, that would be somewhere here (indicating), your Honor.

THE COURT: There is a Board of Education document somewhere that describes each district. It must be an annual document, I forget what it is.

MR. GOPSTEIN: And we have it for some of the years --

THE COURT: We have one or two floating around.

MR. TODEL: I think they are attached to the Exhibit in the motion papers.

THE COURT: For one or more years.

MR. TODEL: Yes, I think so.

THE COURT: I am not sure those weren't proposals rather than actual districts.

MR. TODEL: I think the proposals were opted.

BY MR. GOPSTEIN:

Q Dr. Zack, since this map, Defendant's Exhibit I does not appear to have the eastern boundary for the years '68 through '71 in the Lane zone, I would like to refer you to this map which has already been introduced as Plaintiff's Exhibit 11. Could you explain what this map indicates, this map indicates three different times in the zoning of Lane High School; 1965, 1970 and 1971.

THE COURT: What was that again?

'65, 70 and 71.

Q I show you the original map for '65, which I believe we have already had up on the wall, and the eastern border is the one you have described as Woodhaven Boulevard?

A Yes.

THE COURT: What about when you get down south on the way to the Bay, what is the easterly boundary

there?

THE WITNESS: Elderts Lane.

THE COURT: Does that show up on our map here, that boundary?

If we look under the bottom map --

MR. GOPSTEIN: It's difficult to say. The eastern line again doesn't exist. We have the borough line.

THE COURT: They haven't drawn in the eastern line for the school district.

THE WITNESS: We have only the western one. I think it would be Skank, if I am not mistaken.

Q In this overlay map, plaintiff's Exhibit 11, I ask you to look at the map for 1970 of Franklin K. Lane, and could you describe the eastern border?

A Continues to be Woodhaven Boulevard.

Q Look at the '71 map, the overlay map.

A Similarly, it's Woodhaven Boulevard.

MR. GOPSTEIN: We do have changes in the western part in the last few years. I think we will get to that later.

May I have this marked?

THE CLERK: Defendants Exhibit J, marked for identification.

Q I show you Defendant's Exhibit J and ask you if you can identify that?

A This is the zone for the Brooklyn high schools for the period 1972-'73, as projected according to the sheet.

Q It does not include the eastern boundaries of Lane High school.

I believe, your Honor, for that, we could look at the map on the other side, it would be up to date.

Can we have this marked?

THE CLERK: Defendant's Exhibit K and Defendant's Exhibit L, marked for identification.

Q I show you Defendant's Exhibit K, could you identify this map?

A This map is the Queens High School zones for the years 1966-'67.

Q I show you Defendant's Exhibit L, can you identify this?

A This is the map for the Queens High Schools effective September 1971.

Q And in this map, we do have the eastern boundaries.

THE COURT: In both of the last two?

MR. GOPSTEIN: Yes.

THE COURT: At least, we have it by inference.

Q As best as you can see, are the lines of the Lane zone as they go into Queens, the same in both of these maps, '66 and '71?

THE WITNESS: They are.

MR. GOPSTEIN: I offer these maps in evidence as Exhibits C through L.

MR. TODEL: Just with reference to a voir dire as to the last two Exhibits, Your Honor, if you will.

Mr. Zack, you mentioned that the lines on Exhibit K and L, would be the easterly line of Lane, K and L are the same.

THE WITNESS: Yes.

MR. TODEL: I show you Defendant's Exhibit K and I notice there is something crossed out.

THE WITNESS: It's marking out the barrier. It's the same as you have here.

THE COURT: That is the Lane eastern extension.

MR. TODEL: No objection, your Honor.

THE COURT: C through L.

MR. GOPSTEIN: Correct.

Q Dr. Zack, the maps that have been introduced, although they are not exactly the same type of maps for each year, they do cover the period from '61 to the present time,

and as best you are able to determine from these maps, has the zone of Franklin K. Lane High School, extending eastward into Queens been substantially changed?

A It has not.

Q There is no indication on these maps. Some very large areas haven't been taken out of the Queens District over this past decade.

A None.

Q I would remind you, Dr. Zack, there has been testimony, I am not sure to what extent the map actually reflected --

THE COURT: Well, testimony with respect to people attending Franklin K. Lane in years gone by from Glendale to the north of the present school boundaries, and from Ozone Park, Woodhaven, and another community, south and southwest, Linden something or other --

MR. TODEL: Lindenwood.

Q And I believe we had testimony as to a very minor change, that involved the Forest Park Coop, which I believe Mr. Thorne said involved about 13 children, I am not sure how accurately the map shows them.

THE COURT: That's on the north side.

MR. GOPSTEIN: The tip, I believe.

Q So based on these maps, at least these maps, they would indicate, would they not, for the past approximately ten years, there have been no changes, no substantial changes in the zoning of Franklin K. Lane High School, that is jutted into Queens.

A That is true.

Q Now, there have been, have there not, some change in the main zone in the last few years?

A There has been.

Q And could we take this perhaps in chronological order, there has been reference in this trial to enclave zoning or skip zoning, and was this method of zoning tried at one point with Franklin K. Lane High School? Let me put it another way. Did enclave zoning cut into or affect Franklin K. Lane High School?

A Frankly, I am not aware of it.

Q I would like to show you this (showing witness document).

A I am not aware of our use of enclaves in the case of Franklin K. Lane. I must, in response to your question, say that the map indicates that in an area that would probably be described as an area dealing with Bedford-Stuyvesant, there was an enclave.

MR. GOPSTEIN: Mark this.

THE CLERK: Defendant's Exhibit M marked for identification.

Q Dr. Zack, could you describe Defendant's exhibit M?

A These are rather small scale descriptions of the Brooklyn academic high school zones, beginning with 1969, 1968, 1969, then going to 1969-'70, then '70-'71 and finally, '71-'72.

THE COURT: You describe one as an enclave area, which one was reference made to? Is that on the '69-'70 map, where it shows skip zones for Midwood, Franklin Roosevelt, Tilden and Sheepshead Bay High School, and practically cutting the Lane district in half?

THE WITNESS: Yes, that's true.

MR. GOPSTEIN: I should point out to the Court, examining the overlay map and Defendant's Exhibit M which I have just introduced, it would appear that the map that is marked 1970 on the overlap map, is the '69-'70 map actually, because the blue lines on the overlay map which indicates 1970, and which seem to have cut Franklin K. Lane into two sections are just about identical to the map that appears in the Defendant's Exhibit M as of

the '69-'70 map, rather than the '70-'71 map. If that was intended here to say that was the '70-'71 map, I say we should make it consistent. On the '70-'71 map, the small maps, Lane does not appear as cut into two areas.

THE COURT: Well, no, meanwhile they rezoned Boys High.

MR. GOPSTEIN: I would like to get the consistency between these two maps. It says on the overlay, '69-'70. The overlay that separates the subdivision of Lane into two sections.

I would like to offer this in evidence.

MR. TODEL: May I see it, your Honor?

(Mr. Todel looking at Exhibit.)

MR. TODEL: No objection, your Honor.

THE COURT: Received.

THE CLERK: Defendant's Exhibit M previously marked for identification, now received in evidence.

Q It would appear then, Dr. Zack, based on the maps overlay introduced in evidence as Exhibit M, that during the '69-'70 school year, there was some degree of enclaves, that was before Franklin K. Lane.

A Yes.

Q Students who included in such enclaves would go to some other schools?

A That is right.

Q I show you the maps for -- the small map for 1970-'71, and ask you whether therewas again a change in the Lane zone, looking at the western part of the zone.

A The western part of the zone was cut down in the creation of a zone for Boys High School. A number of enclaves were placed into the Boys High area together with a segment of thearea that was formerly assigned to Franklin K. Lane.

Q I show you the map for '71-'72, and ask you whether in addition to this map, any additional changes were introduced that would affect Lane's attendance in '71-'72.

A In addition, -- what happened in '70-'71, the cutting back of the zone by creating Boys High School, two schools in Ocean Hill-Brownsville, which are in the zone for Franklin K. Lane, were given options to go to schools, -- other schools in South Brooklyn, as an alternative to attending Lane as an open option for them. Those schools were IS 271 and IS 55.

MR. TODEL: What year was that?

THE WITNESS: '70-'71.

Q I believe we are talking about '71-'2?

A '71-'2.

Q For the open admissions?

A Yes.

MR. GOPSTEIN: May I have this marked?

THE CLERK: Defendant's Exhibit N for identification, and Defendant's Exhibit O marked for identification.

Q Dr. Zack, I show you Defendant's Exhibit N and O, could you please describe what these documents are?

A These documents were issued to the Community Board of Brooklyn, the president of academic high schools of Brooklyn, and the principals of junior high schools, and the intermediate high schools of Brooklyn. Their subject was the open admission program, advising the junior high schools and intermediate schools, as to the allocation made to the intermediate high schools in Brooklyn. This disclosed the open admission which was undertaken to abolish all enclaves for a wide area throughout Brooklyn, it's rather detailed.

THE COURT: When was that?

THE WITNESS: That was 1971-'72. The second one will apply to '72-'73. It is a similar document describing the open admissions approach.

THE COURT: Which was the earliest one?

THE WITNESS: It began with '71-'72, and the second document marked O, will describe, or does describe the allocations made under the open admissions

program in similar terms for the year '72-'73.

Q Dr. Zack, I ask you to look first at Exhibit N, which is the 1971-'72 announcement, and could you please turn to page two and just read item four.

MR. TODEL: It is not in evidence as yet.

MR. GOPSTEIN: I would like to offer it into evidence.

THE COURT: I think Exhibit N, that was --

MR. GOPSTEIN: Your Honor, are we to assume Exhibit O is not in evidence.?

THE COURT: I think we attempted to cover that at the beginning of the trial, but not very successfully.

MR. GOPSTEIN: I would gladly, if we could stipulate, to put the whole thing in evidence. Some ofthe documents we are introducing, are repetitive.

THE COURT: We have been making reference to --for example, Exhibit 5 -- that is Roman V -- that was an Exhibit to Mr. Anker's affidavit.

MR. TODEL: If the Court please, I believe in the beginning of the case, I did make reference to the fact as part of the case, that we would consider all the Exhibits which were attached to

motion papers, and also the hearing, and that they be placed as part of the evidence that would be introduced at this trial.

MR. GOPSTEIN: I wasn't clear whether we introduced it or just referred to it.

THE COURT: We haven't assigned them any numbers, that's the only difficulty. The question left up in the air, is to the extent it was complete freedom to refer to it, but I think there is no point in keeping these things out of evidence, just because they are in the motion papers. If this is the logical place to put it in, it will facilitate talking about it.

MR. GOPSTEIN: Could we -- I imagine the defendant -- if we put in the entire record of the motion for summary judgment, we could put it in at this point.

THE COURT: What are you going to call it?

MR. TODEL: Pardon?

THE COURT: What will you call it?

MR. TODEL: If the Court please, we would call it the Exhibits which are introduced and are next to the motion papers which are part of this trial, and they still maintain the same numbers that

they had in the motion papers, with reference to the Exhibits which were given to them in the motion papers.

THE COURT: I think, in the motion papers, the counsel had assigned Roman numerals to them, so it might not be any confusion. For the sake of sheer elegance, we can call it conclusive Exhibit P.

THE CLERK: So marked.

(Continued on next page.)